

4139



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

**Case reference** : **LON/00AH/OC9/2016/0010**

**Property** : **5 & 6 St Matthews House, 98  
George Street, Croydon, Surrey,  
CR0 1PJ**

**Applicants** : **Metropolitan Properties  
(Investments) Limited**

**Representative** : **Wallace LLP, solicitors**

**Respondent** : **(1) Nisha Bhindi  
(2) Pankaj Bhinda and Arjun  
Bhinda**

**Representative** : **Saulet Ashworth, solicitors**

**Type of application** : **Section 91(2)(d) of the Leasehold  
Reform, Housing and Urban  
Development Act 1993**

**Tribunal members** : **Judge Amran Vance**

**Date of determination  
and venue** : **17 March 2016 at  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **17 March 2016**

---

**DECISION**

---

## **Summary of the tribunal's decisions**

1. The tribunal determines that the section 60 statutory costs payable by the lessee of flat 5 is £2,589.00 and that the costs payable by the lessee of flat 6 is £2,562.00.

## **Background**

2. This is an application under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") in respect of flats 5 & 6 St Matthews House, 98 George Street, Croydon, Surrey, CR0 1PJ.
3. The application is made by the freeholder of St Matthews House, Metropolitan Properties (Investments) Limited ("Metropolitan") and is for the determination of the reasonable costs payable by the lessees of both flats under section 60(1) of the Act following service of Notices of Claim to acquire a new lease of their respective flats. The lessee of flat 5 is Nisha Bhindi and the lessees of flat 6 are Pankaj Bhinda and Arjun Bhinda. The lessees of both flats are collectively referred to below as "the Respondents".
4. The freehold title of St Matthews House is subject to a headlease dated 19 May 1989 held by St Matthews House (Croydon) Management Company Limited.
5. On about 23 February 2015 the Respondents, through the same solicitor, made claims to acquire a new lease of their respective flats by way of separate notices of claim. On or around 11 March 2016, the recipient of the notices, Metropolitan, through their solicitors Wallace LLP, notified the solicitors acting on behalf of the lessee of flat 6 that it considered the notice of claim for flat 6 to be defective as it did not propose any sum to be paid to the intermediate landlord in accordance with Schedule 13 of the Act. Wallace LLP requested confirmation that it was accepted that the notice of claim was invalid and of no effect. There is no indication in the documents before the tribunal that Wallace LLP received a response to that letter.
6. On or about 23 April 2015, Wallace LLP served counter-notices in respect of both flats on the Respondents' solicitors. These were served without prejudice to the contention that both notices of claim were invalid and of no effect.
7. Wallace LLP state that no further response was received from the Respondents' representatives and that no application to determine the terms of acquisition of a new lease was made to the Property Chamber. As such, the notices of claimed were deemed withdrawn on 24 October 2015.
8. On 8 January 2016 the Metropolitan made an application to the Property Chamber seeking a determination of the costs payable by the Respondents under s.60 of the Act. It seeks the following costs:

## Flat 5

Legal fees	£1,600 plus VAT
Valuation Fees	£500 plus VAT
Courier Fees	£35 plus VAT
Land Registry Fees	£27

## Flat 6

Legal fees	£1,600 plus VAT
Valuation Fees	£500 plus VAT
Land Registry Fees	£42

## **The statutory provisions**

9. Section 60 of the Act provides:

### **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 the appropriate 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.

### **Directions and the schedules of costs**

10. The tribunal issued its standard costs directions on 12 January 2016, providing for the landlords to send the leaseholders a detailed schedule of costs for summary assessment by 26 January 2016, for the leaseholders to provide a statement of case in relation to those costs by 9 February and for the landlords to send any statement in response by 16 February. It was the Applicants’ responsibility to file hearing bundles by 23 February. The tribunal directed that it was content to determine the matter on the papers unless either party requested an oral hearing, in which case the matter would be dealt with at a hearing on 9 March 2015. No party requested a hearing and the application was determined on the papers on 17 March 2016.

### **The tenants’ case**

11. The Respondents agreed that the valuation fees and courier’s fees sought were payable. As to legal costs they considered that the work could have been dealt with by an assistant solicitor throughout and did not need the involvement of a partner. They suggested an appropriate charge out rate for an assistant solicitor to do the work undertaken was £250 per hour as opposed to the hourly rates charged of £420 (partner) and £300 (assistant solicitor). They stated that the Respondents’ solicitors charge out rate is £200 per hour. The Respondents also sought “clarification” as to the Land registry fees sought.

### **The landlords’ case**

12. The landlords’ solicitors made detailed submissions on costs. The initial partner’s charging rate as a grade A fee earner was £420 per hour. An assistant solicitor, who is also a grade A fee earner carried out work including preparing the draft lease. A paralegal spent 0.2 hours (x2) obtaining office copy entries and copies of the respective leases from the Land Registry and was charged out at £180 per hour.
13. Wallace LLP state that they had been acting for Metropolitan for many years dealing with enfranchisement matters. They are the landlords’ choice of solicitors “*and have the knowledge and capacity to deal with this work on their behalf*”. They argue that their charging rates are consistent with those for solicitors in central London and “*it is reasonable for a fee earner with relevant experience to have conduct of the matter and to perform the work on the same*”. As to the principles that the tribunal should consider, reference was made to a number of previous tribunal decisions.

14. Wallace LLP contended that their use of fee earners was appropriate given the complexities of the provisions of the Act and the nature of the work required. It was submitted that “*the time taken by a Partner and Assistant Solicitor to undertake the tasks set out in the costs schedule would be less than that required by a lower level fee earner*”.

### **The principles**

15. The proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of a freehold or the extension of a lease, was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That decision (which related to the purchase of a freehold and, therefore, costs under section 33 of the Act, but which is equally applicable to a lease extension and costs under section 60) established that costs must be reasonable and have been incurred in pursuance of the initial notice and in connection with the purposes listed in sub-sections [60(1)(a) to (c)]. The applicant tenant is also protected by section 60(2) which limits recoverable costs to those that the respondent landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.
16. In effect, this introduces what was described in *Drax* as a “(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis.” It is also the case, as confirmed by *Drax*, that the landlord should only receive its costs where it has explained and substantiated them.
17. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.
18. Wallace LLP rely upon comments of numerous previous tribunal judges in support of its claim for costs. While none of those previous decisions is binding on this tribunal, some of the findings are of persuasive authority. In particular, the tribunal has had regard to the comments of Professor Farrand QC in the decision relied upon by the Applicant in *Daejan Investments Freehold Ltd v Parkside 78 Ltd* (LON/ENF/1005/03), in which, at paragraph 8, he stated:

“As a matter of principle, in the view of the Tribunal, leasehold enfranchisement may understandably be regarded as a form of compulsory purchase by tenants from an unwilling seller and at a price below market value. Accordingly, it would be surprising if reversioners were expected to be further out of pocket in respect of their inevitable incidental expenditure incurred in obtaining the professional services of valuers and lawyers for a transaction and proceedings forced upon them. Parliament has indeed provided that this expenditure is recoverable, in effect,

from tenant-purchasers subject only to the requirement of reasonableness...”

### **The tribunal’s determination and reasons**

19. The only substantive challenge to the costs sought concerns the grade of fee earners who carried out the work itemised in the schedules provided by Wallace LLP and their hourly rates. There is no challenge to the actual work undertaken and nor is it contended that it was inappropriate for Wallace LLP to be instructed.
20. In the tribunal’s view the hourly rates sought are at the very upper end of what can be considered reasonable. The guideline rates issued by the Senior Courts Costs Office currently suggest a figure of £409 for a Grade A solicitor and £296 for a Grade B solicitor. However, the tribunal is conscious that those rates have not changed since 2010. The tribunal accepts that enfranchisement this work is of sufficient complexity and importance in work to justify the hourly rates sought and the involvement of a partner at least in the initial stages following service of a notice of claim.
21. The tribunal accepts that it was reasonable for a partner to carry out the work identified in the schedules. The tribunal has concerns over the amount of time spent by the partner considering the initial notices of claim (0.8 hours x 2) and over the time spent considering the valuation report (0.3 hours x 2). However, no challenge has been raised to the work said to have been carried out and it would be inappropriate for the tribunal to take it upon itself to do so of its own accord.
22. The tribunal considered whether or not it was appropriate for the partner to carry out further work after preparation of the counter notices on 20 April or if it was more appropriate for the subsequent work to have been carried out by a fee earner of up to assistant solicitor grade. Given the complexities of the legislation and the importance of the matter to the landlord the tribunal considers that it was reasonable for that further work to be conducted by a partner.
23. As to the query raised concerning the land registry fees no specific challenge has been brought by the Respondents and the tribunal accepts the Applicants’ explanation at paragraph 27 of its Statement in Reply that the fees have been incurred and apportioned appropriately across the two flats.
24. The tribunal therefore considers that all of the sums set out in the application notices are payable by the Respondents. Although the legal costs stated in the respective schedules (£1,629 plus VAT) are slightly higher than the figures stated in the application form (£1,600 plus

VAT) the Applicant is limited to the costs stated in the application notices, no application to amend the applications having been received.

25. The tribunal determines that the statutory costs payable by the lessees under s.60 of the Act are:

Flat 5

Legal fees	£1,600 plus VAT of £320
Valuation Fees	£500 plus VAT of £100
Courier Fees	£35 plus VAT of £7
Land Registry Fees	£27

**TOTAL**                    **£2,589.00**

Flat 6

Legal fees	£1,600 plus VAT of £320
Valuation Fees	£500 plus VAT of £100
Land Registry Fees	£42

**TOTAL**                    **£2,562.00**

**Name:**            Judge Amran Vance

**Date:**            17 July 2015