



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

Case reference : **LON/00AC/OC9/2014/0159**

Property : **Lower Ground Floor Flat, 35,
Ashbourne Court, Woodside Park
Road, London, N12 8SA**

Applicants : **Mark Van Straten & Harley Van
Straten**

Representative : **In Person**

Respondent : **Brickfield Properties Limited**

Representatives : **Wallace LLP**

Type of application : **Section 60 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal member : **Mrs Helen Bowers MRICS**

**Date of determination
and venue** : **29th April 2015 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **29th April 2015**

DECISION

The section 60 costs determined by the Tribunal are £3,508.70..

REASONS

Background

1. This decision relates to an application made under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The initial application to the Tribunal dated 30th September 2014 identified that the terms of the new lease, the premium and the section 60 costs were in dispute. Subsequently the Tribunal were informed that the terms of the new lease and the premium had been agreed leaving only the section 60 costs to be determined.
2. Directions dealing with the section 60 costs were issued on 19th January 2015 and have been subsequently varied. These Directions indicated that the matter would be dealt with on papers unless either party requested a hearing. There was no request for a hearing and accordingly, this issue has been considered on the basis of the papers provided by the parties. Direction 5 (as amended) required the Applicant to send the bundle of documents for the Tribunal's consideration by 20th April 2015. No bundles have been provided and accordingly the Tribunal has considered all the relevant paperwork on the case file to identify the extent of the dispute between the parties.
3. The section 60 costs set out in a Schedule attached to a letter to the Applicants dated 16 March 2015 from Wallace LLP was for a total of £3,662.60 inclusive of VAT. This sum arises from the total Legal Costs of £2,216.00 plus VAT, Land Registry Fees of £38.00, Courier Fees of £4.50 plus VAT and Valuation Fees of £800 plus VAT. It was explained that the costs schedule had previously been provided to the Applicants' former solicitors by 2nd February 2015 in accordance with the Directions.

The Law

4. Section 60 is reproduced in the Appendix to this decision

Applicants' Case

5. The statement of case sets out the requirements of section 60 and to the extent that any costs should be reasonable and to the extent that the landlord itself would bear such costs at such a level as if the landlord itself was liable to pay. It is assumed that there is a letter of engagement and this would set out what the charging arrangements. However, no

letter is produced by the Respondent and there is no evidence as to what the Respondent would have paid. It is noted that Wallace have considerable experience in this area of work. There have been previous lease extensions at Ashbourne Court, so there would be precedents as to the standard form of lease. Accordingly this would impact on what the Respondent would expect to pay under section 60(2). If the Respondent had direct liability for the legal costs, it would have agreed a fixed cost rather than being invoiced on an hourly rate.

6. It is suggested that the Respondent would not pay as much for items such as the consideration of the validity of the section 42 notice that took 54 minutes at a charge rate of £395 per hour. It is suggested that Wallace should work in the most cost effective manner. Initially a 'long form lease' was produced and it is submitted that was of benefit to the Respondent. After objections to some of the terms of the 'long form lease' a 'short form lease' was then produced. A more practical approach would have been to enquire as to whether the Applicants wanted the 'short form lease' or would be willing to pay more for the 'long form lease'.
7. It is stated that Wallace are an expensive Central London firm of solicitors and that a rural practitioner would have lower overheads and therefore the costs would have been lower. If the Respondent had direct responsibility for the costs these would be a level of £300 to £500 and it is implied that is what the Applicants consider to be reasonable.
8. Although not provided for in the Directions, the Applicants submitted an amended statement of case that was received on 17th April 2015; this was in response to the Respondent's Reply to Points of Dispute. This identified that there was still no confirmation that the Respondent would have borne the costs being suggested. It is stated that the Respondent does not have separate letters of engagement and this is an indication that they would not be liable for the costs as proposed. It is suggested that the process should have involved a letter from Wallace stating the costs and requesting confirmation that the Respondent would pay if the Applicants failed to pay. There is a criticism of a lack of evidence to support the suggestions made that the costs are reasonable. The work is repetitive and there is a distinction between this type of work and work such as litigation in the Chancery Division. It is alleged that Wallace have far spent less time on this issue as indicated on their timesheets.
9. The Applicants have tried to raise the issue of the level of these costs with regulators such as The Law Society, The Solicitors Regulation Authority and the Legal Ombudsman. However, they have been informed that as Wallace is not a 'service provider' of the Applicants there is no scope to investigate. Accordingly, reliance is placed on the Tribunal to rigorously consider the Applicants' case.

Respondent's Case

10. The Respondent's schedule of costs listed work from 6th February 2014 and the consideration of the Notice of Claim until 21st January 2015 for the preparation of a letter to the Applicants' solicitor. The total time identified in dealing with this case is 5.3 hours at a charging rate varying from £395 per hour for a partner to £150 per hour for a paralegal. Additionally, future sums amounting to 0.7 hours related anticipated work for the completion of the matter and related correspondence. This gives the total time expended on this matter as 6 hours.
11. It was explained that some of the work that was undertaken on 23rd April (0.6 hours at £285 per hour - £171) and 20th May 2014 (0.3 hours at £185 per hour - £85.50) related to the Applicants' solicitors agreeing to a 'long form lease' subject to amendments and then the Applicants requiring a 'short form lease'. References to service charge provisions were introduced to reflect the management functions to be carried out at the building and were introduced in the interest of the 'comfort and convenience of the residents'. It is suggested that such provisions fall within section 57(6)(b) of the 1993 Act.
12. The Respondent has selected Wallace as its chosen legal representative in undertaking work at Ashbourne Court. In undertaking the work for each lease extension, Wallace considers each case in light of the provisions of section 57 of the Act. All fee earners dealing with this case are experienced solicitors who specialise in 1993 Act work. No valuation work is carried out, but there is some liaison with the valuer to confirm contents and validity of notice, reporting to the valuer about the land registry entries and lease issues, to confirm the valuation date and the peruse the valuation report to confirm the correct assumptions have been made.
13. In the Reply to Point of Dispute it is explained that on receipt of the Notice of Claim Wallace were instructed, there was no requirement for a specific letter of engagement due to the ongoing contractual relationship with the Respondent and other companies within the Freshwater Group. Wallace have been instructed since 1996 and each year a revised charge out rate schedule is provided. Attached to the is a copy of a letter from Wallace to Freshwater Group of Companies dated 4th August 2014 providing a schedule of individual charge out rates.
14. This area of law is complex and each case needs careful consideration to ensure validity of a Notice of Claim. The work that is undertaken for the review of the Notice of Claim involves consideration of how the Notice was served, review of the Tenant's details, review of the Notice to ensure compliance with the mandatory requirements of the Act, consideration of whether there is an intermediate landlord, review of the premium offered, consideration of the lease terms offered, and

identification of the relevant property. In these circumstances 54 minutes to consider all of these aspects is reasonable. In summary the total costs are reasonable and are those that would have been incurred by the 'occupant' if they had been personally responsible for those costs. A fixed fee scenario is not appropriate and to charge on a time spent basis is reasonable.

15. There was a final response to the Applicants' amended statement of case. This states that the Respondent is charged for the work on the same rates as claimed under the current case.

Decision and Reasons for the Tribunal's Determination

16. *Drax v Lawn Court Freehold Limited*[2010] UKUT 81 (LC) dealt with costs under section 33 of the 1993 Act, rather than section 60, but the principles established in *Drax* have a direct bearing on costs under section 60. In summary, costs must be reasonable and have been incurred in pursuance of the section 42 notice in connection with the purposes listed in sub-paragraphs 60(1)(a) to (c). The nominee purchaser is also protected by section 60(2), which limits recoverable costs to those that the lessor would be prepared to pay if he were using his own money rather than being paid by the nominee purchaser.
17. This does, in effect, introduce 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 lessor should only receive his costs where it has explained and substantiated them.
18. It does not follow that this is an assessment of costs on the standard basis. That is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.
19. Whilst the principles stated above apply, it is not necessary for a landlord to agree a fixed fee basis with its solicitors. Nor is it necessary for specific evidence to be provided to show that the landlord will be responsible for those fees in the absence of the leaseholders' payment. This Tribunal is an expert Tribunal and has sufficient knowledge and experience to determine what costs are reasonable under section 60.
20. The Applicants suggests that costs of a Central London firm are excessive in comparison to a practice located outside London. The Tribunal has had regard to *Wraith v Sheffield Forgemasters Ltd*; *Truscott v Truscott* [1998] 1 WLR 132, in which the Court of Appeal gave guidance on the factors to take into account in determining whether it is reasonable for a party to instruct a particular firm of solicitors. In the judgment of Kennedy LJ at p.141C-E. Each case turns on its own facts. The essential point is that a party has a right to choose their own legal representative, but not to demand reimbursement of the extra costs from a "luxury choice". In the current case the property is in

London, the Respondent is based in London, the Freshwater Group have used Wallace for several years and 1993 Act work is a specialist area of law. In these circumstances the choice of a Central London firm is therefore justified. It is noted that different individuals are allocated to the case in respect of the necessary experience that is required at that stage. This is appropriate and accordingly, the Tribunal accepts that the various charge out rates are reasonable for a Central London firm.

21. In considering the specific work that was undertaken The Tribunal turns to the time charged for the individual items on the detailed schedule. The Tribunal considers the particular items raised by the Applicants or dealt with by the Respondent.

(i) Considering the Notice of Claim: £355 is claimed (0.9 hours at £355 per hour). The Applicants suggest that this sum is excessive. Given the scope of work detailed by the Respondent, the Tribunal does not consider that 0.9 hours is unreasonable.

(ii) Preparing Draft Lease – ‘long form lease’ and ‘short form lease’: £256.50 is claimed (0.6hrs at £285 per hour on 23rd April and 0.3 hours on 20th May). It is suggested that there are precedents in the building and that the terms relating to service charges should not be included. The ‘long form lease’ seems to include a number of new clauses which were subsequently replaced by the ‘short form lease’. The default position for a new lease is as it is currently drafted (Section 57(1)). Negotiating new terms falls outside the scope of Section 60(1). Therefore the Tribunal reduces the sum claimed by 50% to £128.25. There is a reduction of £128.25.

22. There are no other detailed submissions in respect of the other time units that have been charged. However, in looking at the overall time allocated on this case (6 hours, but subject to the comments in 21(ii)), this is not an unreasonable amount of time in dealing with a lease extension under the 1993 Act.
23. The Applicants make no submissions in respect of the Land Registry Fee, the Courier Fee and the Valuation Fee. Accordingly the Tribunal determines that those sums are payable under section 60.
24. In summary the section 60 costs are reduced to a total sum of £3,508.70. This is calculated from total Legal Costs of £2,067.75 plus VAT, Land Registry Fees of £38.00, Courier Fees of £4.50 plus VAT and Valuation Fees of £800 plus VAT.
25. In a letter from Wallace to the Tribunal dated 17 March 2015 and copied to the Applicants there is a reference to a determination of wasted costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. However, there is no further

argument on behalf of the Respondent on this point and accordingly the Tribunal makes no determination.



Name: Chairman - Helen Bowers **Date:** 29th April 2015

Appendix

Leasehold Reform, Housing and Urban Development Act 1993

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 [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.