



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

Case Reference : **MAN/00CM/OC9/2019/0003**

Properties : **47 Edgmond Court, Sunderland
SR2 0DX**

Applicant : **Buscharm Limited**

Representative : **Stevensons Solicitors**

Respondent : **Derryland Limited**

Representative : **Andrew Craig Property Management**

Type of Application : **Application for determination of
costs - Leasehold Reform and Urban
Development Act 1993, Sections 60(1)
and 91(2)(d)**

Tribunal Members : **Mr S.Moorhouse LLB
Mr I R Harris BSc FRICS**

**Date of Paper
Determination** : **6 May 2020**

**Date of issue of
Decision** : **12 May 2020**

DECISION

DECISION

1. Costs of £636 plus VAT (legal) and £500 plus VAT (valuation) together with disbursements of £30, are payable by the Respondent to the Applicant pursuant to section 60(1) of the Leasehold Reform, Housing and Development Act 1993 (credit to be given for the deposit previously paid).

REASONS

Application

2. An application ('the Application') pursuant to Section 91(2)(d) of the Leasehold Reform, Housing and Development Act 1993 ('the Act') was made to the Tribunal on 13 December 2019 seeking a determination of costs payable to the Applicant pursuant to section 60(1) of the Act in relation to a new lease of 47 Edgmond Court, Sunderland SR2 0DX ('the Property').
3. The Tribunal had previously determined the price payable for the new lease and the terms of the lease in a decision dated 31 January 2018.
4. Directions were issued following receipt of the Application, pursuant to which the parties submitted a Statement of Case. Additionally, the Applicant submitted a 'reply', beyond the scope of directions, essentially upholding its earlier Statement of Case and referencing parts of this.
5. Neither party having requested a hearing, the Tribunal determined the Application on the papers.
6. The relevant law, the submissions of the parties and the Tribunal's reasons for its decision are summarised in the sections that follow. A number of matters were not in issue, including:
 - the Respondent's liability in principle for legal and valuation costs pursuant to section 60(1) of the Act;
 - the Applicant's right to charge in principle for the categories of expenditure referred to in the Applicant's schedule of legal costs; and
 - the Respondent's liability for VAT on legal and valuation fees.

The Law

7. Section 60 of the Act states:

“(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 any costs incurred by him up to that time.

[.....]

(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.

Submissions

Applicant

8. The Applicant claims legal costs of £927.50 plus VAT, with disbursements totalling £30. These are calculated at the hourly rate of £265 + VAT, all work being done by Mr Stevenson, a solicitor who qualified in 1983 and specialises in leasehold enfranchisement. A breakdown of time incurred, based on 6 minute units of time, shows a total amount of time expended of 3.5 hours. Submissions support the various categories and elements of work included. Disbursements are claimed of £24 (postages special/signed for inc. VAT) and £6 (Land Registry).
9. In relation to the charge rate of £265, the Applicant submits that there is no requirement to find the cheapest solicitor but only to give such instructions as it would ordinarily give if it was going to be bearing the costs itself, and that it would itself seek an experienced lawyer. The Upper Tribunal case of *Sinclair Gardens Investments (Kensington) Limited -v- Paul Kenneth Charles Wisbey and Lesley Barbara Mary Wisbey [2016] UKUT 203 (LC)* is cited in support of a contention that it is reasonable to instruct a solicitor experienced in the relevant area of law and that a charge rate of £250 + VAT per hour was reasonable for such a solicitor in August 2014.
10. Reference is also made by the Applicant to cases relating to 68B Maud Road, London (*Appeal by Alka Arora [2013] UKUT 0362 (LC)*) and 11B

Arlington House, All Saints Ave, Margate (*Metropolitan Property Realizations Ltd v John Keith Moss [2013] UKUT 0415 (LC)*) in support of the reasonableness of the £265 rate. It is submitted that in accordance with *Moss*, the sole test at section 60(2) of the Act is whether the landlord would reasonably pay, not whether the tenant or a tribunal consider them to be subjectively unreasonable. *Wisbey* is cited also in support of the contention that the only burden of proof the Applicant landlord must satisfy is as to evidence that the costs would have reasonably been incurred by the Applicant landlord if paying the costs itself. It is contended that *Moss* is relevant to the issue that the landlord has no alternative but to incur such costs to fully protect its interests in the procedure. It is stated by the UT in *Moss* that it is a matter of basic fairness necessary to avoid the statute from becoming penal that the tenant should reimburse the costs necessarily incurred by any person in receipt of such a claim in satisfying themselves that the claim was properly made, in obtaining advice on the sum payable...and in completing the form of steps necessary to create it.

11. The Applicant additionally claims the costs invoiced by the Applicant's valuer in the sum of £575 + VAT. It is submitted that these are modest and reasonable, and are payable by the Respondent.

Respondent

12. The Respondent makes reference to the case of *Buscharm v Derryland, 67 Prebends Field (MAN/00EJ/OC9/2019/0002)*. This case was determined by a different First-tier Tribunal on 26 November 2019 and the case is described by the Respondent as identical to the present case. In the *Prebends Field* case it was decided that the total amount to be awarded was £1287.24. The Respondent has supplied a copy of a written offer to pay the same amount in the present case.
13. The Respondent submits that none of the cases cited by the Applicant are directly relevant to the present case and relies upon the hourly rate for legal costs of £201 + VAT determined in the *Prebends Field* case and the finding in that case as to the hours reasonably incurred.
14. The Respondent submits that the case is not a 'stand alone' matter such as a London flat, but is one of thousands of Leech lease extensions processed in the North East, probably many of them dealt with by the Applicant's solicitors. Relevant documents will be word processed and readily available. The number of hours incurred should therefore be substantially reduced, and instructions streamlined and swift - it is contended that the Applicant owns swathes of Leech freeholds in the North East. It is noted also that the lease did not complete in the present case.
15. The Respondent submits that the work would not require the attention of Mr Stevenson personally and a large percentage could have been completed by a Licensed Conveyancer under supervision.
16. As a Fellow of the RICS, the Applicant's representative submits that a valuation fee of £500 + VAT would represent a fair fee in this matter.

Reasons for Decision

Legal Costs

17. Section 60(2) of the Act provides that:

'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 cost'

18. The Tribunal accepts the Applicant's submission referencing *Moss* and *Wisbey* that this is the sole test as to whether costs are to be regarded as reasonable in the context of section 60(1). It is necessary for the Tribunal to apply this test to the costs proposed. The Tribunal also accepts in accordance with the Upper Tribunal's decision in *Moss* that it is a matter of basic fairness that costs necessarily incurred should be reimbursed.
19. The Tribunal accepted that the activities identified in the schedule of legal costs submitted by the Applicant were chargeable, but identified a few instances in which the time incurred appeared to be excessive and to go beyond what might reasonably be expected to be incurred by the Applicant had the Applicant been personally liable for the cost.
20. In relation to 'Attendances on client obtaining instructions and advising' the Tribunal considered 5 units to be excessive given that, to the knowledge of the Tribunal, Stevensons Solicitors regularly act for the Applicant in such matters and instruction and advice would reasonably be expected to be streamlined. 3 units were considered by the Tribunal to be reasonable applying the test outlined above.
21. In relation to 'consideration of validity of tenant's notice', again the time was considered to be excessive - 2 units were considered by the Tribunal to be reasonable, applying the test outlined above and taking into consideration the degree of specialisation and experience of the Solicitor.
22. In relation to 'considering terms of lease for inclusion in Counter-notice' and 'drafting Counter-notice' the total time of 7 units was considered to be excessive given the degree of specialisation and experience of the Solicitor - a total of 5 units was considered by the Tribunal to be reasonable applying the test outlined above.
23. Accordingly, the Tribunal considered that 3 hours of time were reasonably incurred (applying the above test).
24. The Tribunal accepted the Applicant's submission that it would pay for an experienced lawyer and rejected the Respondent's argument that the costs should be reduced on the basis that a large percentage of the work could adequately be completed by a Licensed Conveyancer under supervision. The *Wisbey* case provides authority that the landlord may choose which lawyer to instruct - they are not bound to instruct a person at a particular

level of experience or to find the cheapest, but only to give such instructions as the landlord would ordinarily give if it was going to be bearing the costs of paying for the service itself.

25. The circumstances of the *Prebends Field* case are very similar to those in the present case. A different First-tier Tribunal considered a new lease of a flat pursuant to the Act, in relation to a different North East location, but the same parties. In common with the present case, all of the legal work had been undertaken by Mr Stevenson personally. In that case the Tribunal had regard from its own knowledge and from the papers before it to national guideline rates for legal costs. Having regard to that information and using its own expertise to determine reasonableness, the Tribunal determined that for work of the type involved, the hourly rate in that case should be £201, exclusive of VAT.
26. In the *Wisbey* case it appeared that there had been, or there was the prospect of, further transactions on the same estate. Reference was made to repetition and to reduction in time incurred as well as to personal responsibility for individual transactions and work attributable to the particular facts of the case. In the absence of any reason as to why a quantum discount in legal fees or a discounted fixed fee arrangement would not have been available, it was considered that the appellant might reasonably have been expected to negotiate a substantial reduction in the nature of a discount or fixed fee. A discount of 20% was applied by the Upper Tribunal.
27. In the present case various references are made by the Applicant to charge rates in other cases, in support of the £265 per hour rate quoted for Mr Stevenson. None of the cases cited by the Applicant are directly comparable. For example, the *Arora* case noted that the guideline hourly rate identified by the Senior Courts Costs Office for a solicitor of Mr Arora's seniority was £229-£267, significantly greater than the guideline rate applicable to Mr Stevenson identified by the First-tier Tribunal in the *Prebends Field* case. The decision in the *Prebends Field* case, whilst not binding upon the present Tribunal, is based on very similar circumstances to those in the present case. The decision by the First-tier Tribunal in that case accords with the approach by the Upper Tribunal in *Arora* in that guideline rates were considered in applying subsections 60(1) and (2) of the Act.
28. In the Tribunal's own experience (which includes both undertaking and instructing legal work) it would be reasonable to expect a discount on normal charge rates where a law firm is appointed, not on one-off basis, but to undertake a continuing series of regular instructions. Whilst the Upper Tribunal made reference in the *Wisbey* case to repetition, there is a commercial reality to discounting also. In the Tribunal's view, if the Applicant were itself paying its legal costs, it is unlikely that the charge rate of £265 + VAT would be considered reasonable in the context of a regular stream of enfranchisement instructions in relation to lease arrangements already familiar to the law firm.

29. The decision and supporting reasons in the *Prebends Field* case support a discount against the £265 + VAT charge rate. The Tribunal's experience and view expressed above concerning volume work supports a discount. The Tribunal determined in the present case that a 20% discount should reasonably apply, to arrive at a rate that might reasonably be expected to have been incurred by the Applicant had it being paying the costs itself.
30. The Tribunal accordingly determines a charge rate of £212 + VAT per hour and time incurred of 3 hours. Legal costs of £636 + VAT are payable by the Respondent together with disbursements of £30 (which are not challenged by the Respondent).
- 31.
32. The Applicant provided no breakdown of the valuation costs of £575 + VAT nor was an hourly rate supplied. The valuer was believed by the Tribunal to have undertaken a review of the lease, arranged and undertaken (or sub-contracted) an attendance at the Property and completed the statutory valuation exercise.
33. Applying the test at section 60(2) of the Act the Tribunal determines, applying its own knowledge and experience of valuation fees, that in 2017 when the valuation report was prepared, the Applicant would have reasonably expected to incur a fixed valuation fee not exceeding £500 + VAT had the costs been payable by it. The Tribunal therefore agrees with the Respondent's contention that the valuation fee should be reduced to £500 + VAT.

Tribunal Judge S Moorhouse
12 May 2020