



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

Case Reference : **BIR/00CN/OC6/2021/0004**

Property : **40, Rollason Road Erdington Birmingham
B24 9BH**

Applicant : **Shoab Mir**

Representative : **Anthony W Brunt. Surveyor**

Respondent : **Aswin Sharma**

Representative : **Barnett Alexander Conway Ingram LLP
Solicitors**

Type of Application : **Application for determination of reasonable
costs under ss 9(4), 21(1)(ba) & 21(2)
Leasehold Reform Act 1967**

Tribunal : **Tribunal Judge P. J. Ellis
Tribunal Member Mr V Ward FRICS.
Tribunal Member Mr Wyn Jones**

Date of Hearing : **23 November 2021**

Date of Decision : **20 December 2021**

DECISION

The total sum payable by the Applicant to the Respondent for costs of and incidental to the matters provided for in s9(4) Leasehold Reform Act 1967 is £1619.40 being £999.50 plus VAT of £199.90 for legal fees and £350 plus VAT of £70 valuer's fee.

Introduction and Background

1. This is an application under section 21(1)(ba) Leasehold Reform Act 1967 (the Act) for a determination of the reasonable costs payable under section 9(4) of the Act following the acquisition of the freehold of 40 Rollason Road, Erdington, Birmingham B24 9BH (the Property)
2. The Applicant is Mr. Shoab Mir. The Property is 40 Rollason Road Erdington Birmingham. The Applicant was represented by Mr. Anthony Brunt. The Respondent is Aswin Sharma who was represented by Barnett Alexander Conway Ingram solicitors of Ballards Lane, London.
3. The Tribunal determined the sum payable upon enfranchisement of the Property on 7 October 2021 (BIR/00CN/OAF/2021/0012). This application in respect of the costs was issued on 28 June 2021. Directions for determination of the dispute were issued on 9 July 2021. The parties served their respective submissions in accordance with the directions and the matter was listed for hearing for determination on the papers alone on 23 November 2021.
4. The relevant costs are those of the Respondent who instructed Mr. Lederer a consultant with the Respondent's solicitors. He is experienced in dealing with leasehold enfranchisement and substantially dealt with the matter throughout.
5. The Applicant was represented by Mr Anthony Brunt a surveyor with substantial experience in dealing with leasehold enfranchisement.
6. Each representative made their representations about the costs claimed by the Respondent's advisors. The itemised claim, the Applicant's response and the Tribunal's decision are set out in the table annexed to this decision.

The Submissions

7. On behalf of the Applicant, Mr Brunt did not challenge the hourly rate claimed by Mr Lederer of £245.00 per hour, for the work done. His challenge was that not all the work claimed is allowable under the provisions of s9(4) of the Act. Further he asserts the time taken by the Respondent's adviser is excessive. He has calculated the total number of hours claimed as 13 for the transaction which he regards as excessive especially as there is a separate claim of a further three hours to handle the conveyancing. He points out that the Property has a

registered title. It is not part of a larger Property requiring division and separate registration. He then went through each item of claim either proposing reductions or deletions or accepting them. His proposed items of charge are recorded in the table.

8. Mr Lederer lodged his time sheets with his statement of case. He refuted Mr Brunt's assertions, contending that the work recorded was unnecessary. The Respondent was not a willing vendor and is entitled to advice on all aspects of the application to enfranchise the Property and its consequences. He claims the Respondent is further entitled not only to be advised but to be guided in his decision making because he was unfamiliar with the process.
9. He also maintains that the work involves complex and far-reaching issues requiring explanation to the Respondent. He asserted the time taken was reasonable and required.
10. The costs claim includes a valuer's fee. There is a dispute as to whether or not this was a straightforward case. The Respondent contends the case raised several issues that needed detailed consideration which might have resulted in several different outcomes. The Respondent contends the Tribunal's Decision justified the time spent by his valuer.

The Relevant Statutory Provision

11. *S9(4) of the Act provides the framework within which the Tribunal must operate.*

"Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters:—

- (a) any investigation by the landlord of that person's right to acquire the freehold;*
- (b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;*
- (c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;*
- (d) making out and furnishing such abstracts and copies as the person giving the notice may require;*
- (e) any valuation of the house and premises;*

but so that 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.

(4A) Subsection (4) above does not require a person to bear the costs of another person in connection with an application to the appropriate Tribunal.”

Discussion

12. The relevant legislation is similar to the equivalent provisions in s60 Leasehold Reform and Urban Development Act 1993 to which the Tribunal has had regard when deciding this case.
13. In *Sinclair Gardens v Wisbey* [2016] UKUT 203 (LC) HH Judge Huskinson said in connection with a lease extension case pursuant to s60 of the Leasehold Reform and Urban Development Act 1993:

“In my judgment on the proper construction of section 60 there is a burden upon the landlord who is claiming costs for professional services (which therefore fall within section 60(2)) to prove that the costs are (and the extent to which the costs are) reasonable. This follows from the provision that costs “shall only be regarded as reasonable” if and to the extent provided for by the following words.”

14. In *Metropolitan Property Realisations Ltd v Moss* [2013] UKUT 0415(LC) Mr Martin Rodger QC the Deputy President giving the decision of the Upper Tribunal said:

“9. These provisions are straightforward and their purpose is readily understandable. Part I of the 1993 Act is expropriatory, in that it confers valuable rights on tenants of leasehold flats to compel their landlords to grant new interests in those premises whether they are willing to do so or not. It is a matter of basic fairness, necessary to avoid the statute from becoming penal, that the tenant exercising those statutory rights should reimburse the costs necessarily incurred by any person in receipt of such a claim in satisfying themselves that the claim is properly made, in obtaining advice on the sum payable by the tenant in consideration for the new interest and in completing the formal steps necessary to create it.

10. On the other-hand, the statute is not intended to provide an opportunity for the professional advisers of landlords to charge excessive fees, nor are tenants expected to pay landlords’ costs of resolving disputes over the terms of acquisition of new leases. Thus the sums payable by a tenant under section 60 are restricted to those incurred by the landlord within the three categories

identified in section 60(1) and are further restricted by the requirement that only reasonable costs are payable”

And at the next paragraph 11, he said:

“Section 60 therefore provides protection for both landlords and tenants: for landlords against being out of pocket when compelled to grant new interests under the Act, and for tenants against being required to pay more than is reasonable.”

15. The operation of the Leasehold Reform Act is also expropriatory conferring on the Applicant the valuable right to acquire the freehold of his Property potentially against the wishes of the Respondent who is entitled to payment of the reasonable costs of and incidental to five categories. Although three categories of costs are recognised in s60 of the Leasehold Reform and Urban Development Act, the Tribunal considers the comments made in relation to s60 are helpful in determining the costs under s9(4) of the 1967 Act including that it is not intended to provide an opportunity for the professional advisers of the landlord to secure an indemnity for their costs.
16. In deciding the costs, the Tribunal has considered whether the items claimed are allowed by s9(4) then whether or not the sum claimed is reasonable in order to achieve the basic fairness necessary.
17. The Respondent may not understand the procedure with which he has become involved and that consequently he requires help and guidance but the case is not made out that the time so spent is within the cost allowed by s9(4). The Tribunal has disallowed excessive attendances on him as it is not reasonable to expect those charges to be met by the Applicant.
18. Mr Lederer, an acknowledged expert in enfranchisement matters has based his costs claim on a simple averral that the time recorded on the time sheets is proper and correct. However, the Tribunal is not satisfied this approach is sufficient explanation of many of the items of claim which are not justified, nor is it justification for the length of time of some claims. Some items of charge may have occurred but it they are not reasonably payable by the Applicant.
19. Moreover, there are claims for items of charge which are not allowed by the statutory provision governing this exercise.
20. The Respondent has claimed costs of research and reporting. These costs are also not provided for in s9(4).

21. Time spent investigating the Applicant's right to acquire the freehold will not require the time claimed.
22. The charge for conveyancing in addition to all other items is grossly excessive. S9(4) (c) & (d) make provision for the supply of documents deducing title in the language of conveyancing at the time of the legislation. The Applicant is taking the title which the Respondent holds. It is unreasonable to pass on all the costs of the Respondent to the Applicant.

The Sum Payable

23. The annexed table includes the Tribunal's reasons for its decision on each item of claim. The total sum allowed is £999.50 to which Vat should be added in the sum of £199.90.
24. The Respondent has added the sum of £850 valuers fee. The Tribunal does not consider that a reasonable sum, for a desktop valuation, to add to the Applicant's account. It adds the sum of £350 and vat of £70 for that fee.
25. The Total sum allowed for the Respondent's legal and valuation costs is £1619.40.00

Appeal

26. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Tribunal Judge Peter Ellis.

40 Rollason Road Erdington Birmingham B24 9BH - Costs Appendix

| ITEM | RESPONDENT | | | APPLICANT | | | TRIBUNAL | |
|--|------------|----------|-------------------|------------|---------------|-----------------|---|-----------------|
| | Units | Rate | Cost | Comments | Offer (Units) | Cost | Decision Ref | Amount Allowed |
| Considering 1967 Act Claim | 17 | £ 245.00 | £ 416.50 | Not agreed | 6 | £ 147.00 | Excessive. Para 17 | £ 49.00 |
| Persual of Lease | 8 | £ 245.00 | £ 196.00 | Not agreed | 6 | £ 147.00 | Excessive. Para 17 | £ 73.50 |
| Perusal | 6 | £ 245.00 | £ 147.00 | Not agreed | 0 | | Not explained Para 17 | |
| Attendance with Client | 15 | £ 245.00 | £ 367.50 | Not agreed | 6 | £ 147.00 | 5 units reasonable and sufficient. Para 17 | £ 122.50 |
| Research on 1967 Act | 15 | £ 245.00 | £ 367.50 | Not agreed | 0 | | Not provided for. Para 19 | |
| Email to Tenants Surveyor | 1 | £ 24.50 | £ 24.50 | Agreed | 1 | £ 24.50 | Agreed | £ 24.50 |
| Call with Client | 5 | £ 24.50 | £ 122.50 | Not agreed | 0 | | Not explained Para 18 | |
| Call with Valuer | 8 | £ 24.50 | £ 196.00 | Not agreed | 2 | £ 49.00 | 2 units reasonable and sufficient. Para 18 | £ 49.00 |
| Preparation of Freeholders Reply | 16 | £ 245.00 | £ 392.00 | Not agreed | 6 | £ 147.00 | Excessive. Para 18 | £ 122.50 |
| Letter to Tenant | 1 | £ 24.50 | £ 24.50 | Agreed | 1 | £ 24.50 | Agreed | £ 24.50 |
| Letter to Tenants Valuer | 1 | £ 24.50 | £ 24.50 | Agreed | 1 | £ 24.50 | Agreed | £ 24.50 |
| Email to Tenants Valuer | 1 | £ 24.50 | £ 24.50 | Agreed | 1 | £ 24.50 | Agreed | £ 24.50 |
| Email to Clients Valuer | 1 | £ 24.50 | £ 24.50 | Agreed | 1 | £ 24.50 | Agreed | £ 24.50 |
| Attending Clients Valuer | 1 | £ 24.50 | £ 24.50 | Agreed | 1 | £ 24.50 | Agreed | £ 24.50 |
| Consider whether lease AST | 5 | £ 245.00 | £ 122.50 | Not agreed | 0 | | 2 units reasonable and sufficient. Para 18 | £ 40.00 |
| Email to Brunt | 1 | £ 24.50 | £ 24.50 | Agreed | 1 | £ 24.50 | Agreed | £ 24.50 |
| Email to Clients re RVs | 1 | £ 24.50 | £ 24.50 | Agreed | 1 | £ 24.50 | agreed | £ 24.50 |
| Email from Valuer to Tenant's Valuer | 1 | £ 24.50 | £ 24.50 | Agreed | 1 | £ 24.50 | agreed | £ 24.50 |
| Research in Hague | 6 | £ 245.00 | £ 147.00 | Not agreed | 0 | | Outside s9(4) Para 19 | |
| Report to Client on research | 1 | £ 24.50 | £ 24.50 | Not agreed | 0 | | Outside s9(4) Para 19 | |
| Queries | 1 | £ 24.50 | £ 24.50 | Not agreed | 0 | | Not explained Para 18 | |
| Considering valuation points with Client | 2 | £ 24.50 | £ 49.00 | Not agreed | 0 | | Allowed | £ 49.00 |
| Report to Client on Valuation Issues | 2 | £ 24.50 | £ 49.00 | Not agreed | 0 | | Not explained. Para 18 | |
| Call with Client re negoations | 2 | £ 24.50 | £ 49.00 | Not agreed | 0 | | Not Reasonable to Charge Applicant. Para 18 | |
| Call with Client re rent arrears* | 1 | £ 24.50 | £ 24.50 | Agreed | 1 | £ 24.50 | Agreed | £ 24.50 |
| Call with Valuer | 3 | £ 24.50 | £ 73.50 | Not agreed | 0 | | Excessive claim. Para 18 | £ 49.00 |
| Call with Client | 10 | £ 245.00 | £ 245.00 | Not agreed | 0 | | Not explained Para 18 | |
| Call with Client | 1 | £ 24.50 | £ 24.50 | Not agreed | 0 | | Not explained Para 18 | |
| Conveyancing costs | | £850 | | | | | Excessive Para 19 | £ 200.00 |
| Total Units | 133 | | £ 3,258.50 | | 36 | £ 882.00 | | £ 999.50 |

Notes

In the Respondent's section, the rates shown in italics are belived to be incorrect and should in fact be £245.00/hour
With regard to the item marked * the Applicant appeared to agree 1 unit in the written statement but not their table.