

# RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

**Property** : **Upper Maisonette,  
36 Gloucester Road,  
Brighton BN1 4AQ**

**Applicants** : **(1) Brian Cyril Braithwaite  
(2) Vanda Irene Rulewska**

**Respondent** : **NOS 4 Ltd**

**Case number** : **CAM/00ML/OLR/2008/0028**

**Type of Application** : **To determine the costs payable on  
enfranchisement (Section 60 of the  
Leasehold Reform and Urban  
Development Act 1993 (“the 1993 Act”))**

**Tribunal** : **Bruce Edgington (Lawyer chair)  
Marina Krisko BSc (Est Man) FRICS  
Sarah Redmond BSc Econ MRICS**

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## DECISION

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1. The reasonable legal costs of the Respondent in dealing with the matters set out in Section 60 of the 1993 Act are £1,714.21 plus £8 for the office copy entries, assuming that the Respondent is unable to recover VAT.
2. The reasonable valuer's fees are £583.10 assuming that the Respondent is unable to recover VAT.

## Reasons

### Introduction

3. The Applicants are lessees of the property under a long lease and have applied to the Respondent for the surrender of their existing lease and the grant of a further long lease pursuant to Section 48 of the 1993 Act.
4. Agreement has been reached on all matters save for the costs to be paid by the Applicants pursuant to Section 60 of the 1993 Act.
5. Written representations have been received from the parties who decided not to attend the hearing and rely, instead, on such written representations.

## The Law

6. When lessees use the enfranchisement provisions, they become liable to pay the landlord's "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"

(Section 60(1) of the 1993 Act)

7. The method of assessment of both legal and valuation fees is what is sometimes called the solicitor and client basis. In other words the costs to be allowed by the Tribunal are those which would be payable by the client "if the circumstances had been such that he was personally liable for all such costs".

(Section 60(2) of the 1993 Act)

8. If the Respondent is registered for VAT purposes, it will be able to recover the VAT on the legal and valuation fees because the legal and valuation services will have been supplied to the Respondent, not the Applicants. Therefore, if this is the case, no VAT will be payable by the Applicants.

9. In their written representations, both solicitors refer to previous LVT decisions. The Applicants refer to **18 Brunswick Place Ltd v. Waterglen Ltd**, decided in the Eastern Panel area on the 10<sup>th</sup> May 2006. The Respondent refers to **Alexandra Court (Bridlington) Ltd v. Corney**, decided in the Northern Panel area on 10<sup>th</sup> January 1997 and **Greenhut v. Clifton Court (Royal Terrace) Ltd**, decided in the Eastern Panel area on the 25<sup>th</sup> January 2001.

10. It is now trite law to say that opinions expressed in previous LVT decisions as to issues within the field of valuation are not evidence. The same general principle would apply in costs cases. Having said that, the **Greenhut** case does set out an analysis of what is still the current case law on the issue of whether it is reasonable for a party to employ London solicitors

## The Issues

11. The issues in this case are the same for each part of the claim. It is said that local surveyors and lawyers should have been employed which, it is claimed, would have reduced the charges considerably. If that point is not accepted by the Tribunal, it is said that the times claimed are excessive.

12. As far as the surveyor's charges are concerned, the main issue is (a) the travel time and expenses and (b) the fact that a local surveyor

would have taken less time to research the market. The Applicants' surveyor charged £425 plus VAT.

13. As far as the lawyers are concerned, the main issue is the hourly rate and specific representations are made as to specific items of claim.
14. The Points of Dispute are clear and succinct. The Directions Order made by this Tribunal was for space to be left on the list of objections for the Respondent's comments to be endorsed. This is the standard and required practice in the courts and its purpose is obvious i.e. to assist the Tribunal in seeing each party's position clearly and in one document. Such space was duly left but for some reason best known to themselves, the Respondent's solicitors have chosen to ignore this.
15. The Respondent's reply is in narrative form and repeats the objection before making the point that the rates claimed are not unusual for London. It is said that using a more junior member of staff would not have reduced the total claim because more junior staff take longer. It defends the times spent and points out that the surveyor's hourly rate is £160 per hour as compared with the tenant's surveyor's charges in 2006 which were £150 per hour.
16. On the issue of using London professionals, it is said that the landlord is based in London and its choice of professional advisers "*was based on the provision of sound advice and guidance, not dictated by the physical location of the property*". Presumably it is not being suggested that advisers outside London are not capable of giving sound advice and guidance.

#### **Conclusions:**

##### **Valuers Fees**

17. Using its knowledge and experience, the Tribunal finds that it is reasonable to use a London surveyor because most clients would want to see their advisers 'face to face' and, as has been said, the Respondent is in London. The hourly rate claimed is reasonable for provincial surveyors and less than some London surveyors.
18. However, a time of 60 minutes to read the lease and Notice of Claim purely for the purpose of valuation is excessive. Each surveyor on the Tribunal independently undertook this task and it took about 10 minutes. It must be remembered that this is an extremely straightforward Lease and an experienced surveyor should be able to identify the matters relevant to a valuation reasonably quickly. 15 minutes is allowed - £40.
19. As far as research of possible comparables is concerned, the first item is disallowed. There is no point in undertaking this task until after the inspection i.e. until the surveyor is clear about what he or she needs to compare the property with. The second item on the 11<sup>th</sup> March is allowed, at £80. As far as travelling is concerned, this is allowed at half the normal charging rate which, in the Tribunal's experience, is reasonable as it does not involve any professional input. Thus £160 is allowed.

20. The valuation itself is very straightforward and should have been undertaken within 30 minutes. The advice to the client on the Counter Notice is claimed at 30 minutes. It is difficult to see how it could have taken this long to undertake this task. 15 minutes is allowed.
21. Thus, the total surveyor's fee allowed is £480 plus VAT (if chargeable) plus the rail fare of £19.10.

### **Legal Fees**

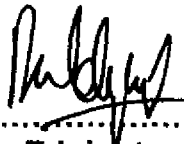
22. Turning now to the solicitors' charges, the hourly rate needs to be considered as a preliminary issue. The Respondent appears to have been charged £285 per hour for the services of Tania Austin who is a solicitor admitted in 1984 with experience of this type of case. She is clearly a Grade A fee earner and it has long been the practice of this Tribunal to allow Grade A rates for technical work in this very specialised field of law.
23. As is reflected in the case law set out in the **Greenhut** LVT decision above, it is reasonable for a client in Mayfair to employ London solicitors.
24. The starting point for hourly rates for a Grade A solicitor in SW1 in detailed assessments of costs in the county court is £304 per hour. Thus £285 per hour is reasonable.
25. Section B of the claim refers to the receipt of the Notice of Claim and the preparation of the Counter Notice to include all the correspondence with the client and the valuer. Two letters were written on the 19<sup>th</sup> March 2008 and the main work seems to have been undertaken on the 1<sup>st</sup> April 2008 when the Notice of Claim and the title were considered and letters were written to the client and the valuer.
26. Then, on the 3<sup>rd</sup> April, the counter notice is drafted taking, it is said, 30 minutes. The terms of any lease extension are governed by Section 57 of the 1993 Act and must be basically in the same terms as the existing lease save as to rent and term. The Notice of Claim asks for just one amendment namely to the insurance provision. It is clear that speedy instructions were given that the extension was to be granted at a consideration of £35,553.00. Drawing this particular Counter Notice was therefore a very straightforward task on a printed form. Even if the solicitor typed this herself, it is difficult to see how it could have taken more than 18 minutes.
27. On the same day, a further hour is spent considering the lease terms including the proposals for amendment. It is difficult to see how such a simple lease could have taken so long to read for a Grade A solicitor. It is appreciated that some time had to be spent on advising the client as to the proposed amendment. It is also appreciated that the proposed amendment was somewhat convoluted. However, it is the Tribunal's view that such an experienced and expert solicitor should not have taken more than 30 minutes to consider the lease, the proposed amendment and then advise the client.

28. As to the conveyancing formalities (Section C), the only difficult issue was the proposed amendment to the insurance clause. This sort of amendment is not unusual in view of the much stricter requirements of Council of Mortgage Lenders and should therefore have been anticipated. It is difficult to see what part of Section C related to advising the client and taking instructions on this issue.
29. The remainder of the conveyancing formalities could not have been more straightforward in view of the statements in both the Notice of Claim and in the Counter Notice that Section 57 prevails save as to the proposed insurance provision. This should not have needed the attention of a Grade A fee earner. A Grade C fee earner would have been perfectly competent and such a person in SWI would attract an hourly rate of £189 in a county court detailed assessment.
30. As far as the detail is concerned, the first item is disallowed as it duplicates previous time spent. There is then time spent on the 22<sup>nd</sup> May, 27<sup>th</sup> May, 3<sup>rd</sup> June, 18<sup>th</sup> June and 20<sup>th</sup> June totalling 3 hours 42 minutes. All this time has been spent in the preparation of a lease where all the technical terms save one were agreed at the outset. The other matter i.e. the price, was to be a matter for the valuer. There is no suggestion by the Respondent's solicitors that the time spent was artificially inflated by the actions of anyone else.
31. As to anticipated time to be spent, the lease appears to have been agreed, engrossment is surely something which the Respondent's solicitors' computer system deals with at the press of a button and the 'usual' formalities are straightforward. This, together with reporting to the client should not take more than an hour.

#### **Summary of Legal Fees Allowed**

32.	<u>Date</u>	<u>Time Claimed</u>	<u>Time Allowed</u>
	<u>Section B</u>		
	19.03.08	12 mins	12 mins
	01.04.08	48 mins	48 mins
	03.04.08	2 hrs	<u>54 mins</u>
			1 hr 54 mins
	<u>Section C (preparation of lease separate)</u>		
	22.04.08	12 mins	6 mins
	29.04.08	6 mins	6 mins
	13.05.08	6 mins	6 mins
	27.05.08	18 mins	18 mins
	03.06.08	18 mins	18 mins
	18.06.08	12 mins	12 mins
	20.06.08	48 mins	48 mins
	24.06.08	12 mins	12 mins
	Anticipated	1 hr 18 mins	1 hr
	Dealing with lease	3hrs 42 mins	<u>1 hr</u>
			4hrs 6 mins

33. Section B is allowed at the rate claimed i.e. £285 per hour. Thus the amount allowed is £541.50. Section C is allowed at £189 per hour and the amount allowed is £774.90. There will be a further 30 minutes allowed at £285 per hour for supervision by the Grade A fee earner i.e. £142.50. Thus the total allowed for profit costs is £541.50 + £774.90 + £142.50 = £1,458.90.
34. As far as disbursements are concerned the £8 fee for office copy entries is agreed. However, bank charges for telegraphic transfers are overheads just as postage and telephone charges and are included in the hourly rate. It is difficult to see what an engrossment fee involves and it is not explained. The only inference can be that it is an overhead and is included within the hourly rates.



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**Bruce Edgington**  
**21<sup>st</sup> August 2008**