

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property : Flats 1 and 2, 55 Bateman Street,
Cambridge, CB2 1LR

Applicant : Milo Sebastian Peter Shaffer

Respondent : The Master Fellows and Scholars of the
College or Hall of the Holy Trinity in the
University of Cambridge

Case number : CAM/12UB/OLR/2010/0020

Type of Application : To determine the costs payable on the grant of
a new lease (Section 60 of the Leasehold
Reform, Housing and Urban Development Act
1993 ("the Act"))

The Tribunal : D S Brown FRICS MCI Arb
J R Humphrys FRICS
Mrs I Butcher

DECISION

The reasonable legal costs and disbursements of the Respondents payable by the Applicant pursuant to Section 60 of the 1993 Act are £1,909.30 plus VAT in respect of Flat 1 and £1,869 plus VAT in respect of Flat 2.

STATEMENT OF REASONS

Introduction

1. This dispute arises from the service of an initial notice in respect of each flat seeking a new lease. In these circumstances there is a liability on the tenant to pay the landlord's reasonable costs.
2. The Tribunal considered that this case was suitable to be determined on a consideration of the papers without an oral hearing. In accordance with Regulation 5 of the **Leasehold Valuation Tribunals (Procedure) (Amendment) (England) Regulations 2004**, notice was given to the parties that a determination would be made without an oral hearing but that a hearing would be held if either party requested one.

The Law

3. It is accepted by the parties that the Initial Notice was served and therefore Section 60 of the 1993 Act is engaged. The Applicant therefore has to pay "...to the extent that they have been incurred in pursuance of the notice..." the Respondents' reasonable costs of and incidental to:-
 - (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.
4. Any such costs incurred by a relevant person shall only be regarded as reasonable if and to the extent that they 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 - what is sometimes known as the 'indemnity principle' (Section 60(2)).
5. The Tribunal has been provided with a bundle of documents including the Statement of Costs, the list of objections and replies and copies of the Initial Notice, the Counter Notice and the original lease.

The Issues

6. The points of dispute can broadly be split into three sections i.e. costs claimed pursuant to
 - (i) section 60(1)(a), investigation of tenant's right to a new lease,
 - (ii) section 60(1)(b), valuation and
 - (iii) section 60(1)(c), grant of new lease.

Solicitors' Charging Rates.

7. The Respondents' solicitors are Mills & Reeve, Norwich office. They state that the majority of work was undertaken by a junior fee earner (Nicola Lebish – Grade D), except for periods when she was on leave when the work was largely covered by a Grade B fee earner (Jayne Grey) and was supervised by a Grade B earner (Catherine Fox). There is no explanation of the roles played by James Falkner or Amanda Tagg, both Grade A fee earners. The charging rates are –

James Falkner	(A)	£254
Amanda Tagg	(A)	£210
Catherine Fox	(B)	£193
Jayne Grey	(B)	£193
Nicola Lebish	(C)	£105

8. Any client instructing a solicitor to deal with this area of law would want a solicitor experienced in the subject to undertake or supervise the work.
9. For assessing solicitors' costs on an *inter partes* basis in the county court, a Grade A fee earner is a senior solicitor with more than 8 years' post qualification experience in litigation and a Grade B fee earner is a solicitor or legal executive with more than 4 years' post qualification in litigation. Higher rates can be allowed to Grade A fee earners for substantial and complex litigation which this is not, in this Tribunal's view. These rates are not mandatory, particularly when one is assessing on an indemnity basis. However, they are helpful as a starting point for assessment.
10. It is this Tribunal's statutory task to assess what is reasonable for a client to pay for fee earners of the relevant grades in a Norwich firm where the client is expecting to pay the solicitors out of his or her own pocket. The Applicant disputes the rates charged by the Respondent's solicitors and suggests appropriate rates to be £217 for Grade A and £192 for Grade B. The Tribunal is not going to concern itself with the triviality of a £1 difference in Grade B rates. The Applicant gives no reason for its suggested Grade A rate but given that Mr Falkner's rate is £254 but Ms Tagg's rate is £210 and the time input by both is negligible, the Tribunal will not take issue with either.

Costs under section 60(1)(a)

11. The Applicant considers that a reasonable sum to be paid in respect of work under this subsection would be equivalent to one hour's time spent at a junior level fee earner between Grade B and D.
12. The Respondent refers the Tribunal to paragraph 32-18 of Hague (5th edition) which states that the normal hourly rate for a partner in the landlord's solicitors was accepted by a tribunal, as was the use of a partner rather than a junior solicitor. The costs set out relate to work actually undertaken and time recorded and billed in respect of it. No justification is provided for the submission that one hour's time by a junior fee earner would suffice. Given the use of a junior fee earner, it is reasonable to expect additional time to be required in carrying out the work involved and for that to be supervised by a Grade B fee earner. If the work had been carried out by a partner or other senior fee earner the work may have been completed more quickly but would have been charged at a higher rate.

Costs under section 60(1)(b)

13. The Applicant does not dispute the valuer's rate of £150 per hour but does dispute the time spent of 6 hours and considers £750 to be more than reasonable.
14. The Respondent states that the work involved for each flat was 0.5 hours examining the leases, 1 hour inspecting the flat, 2.5 hours

researching comparables, 1 hour preparing valuation spreadsheet and 1 hour reporting to the Respondent.

Costs under section 60(1)(c)

15. The Applicant points out that this subsection covers costs of and incidental to the drafting and execution of the new lease and not costs of arguing or negotiating the claim and also excludes costs incurred in connection with the proceedings before an LVT. Negotiations on the lease were carried out in compliance with Directions given by the LVT and were accordingly incurred in connection with the proceedings and are expressly excluded by section 60(5).
16. The Applicant states that the Respondent attempted to vary the lease beyond what is permitted under section 57(6) and then conceded all such amendments and the Applicant should not be responsible for this attempt to redraft the lease.
17. Reference is also made to the duplication of work on the two new leases which should be taken into account in the costs, and the Applicant proposes that the charge should be equivalent to 1.5 hours between a Grade B and D fee earner.
18. The Respondent asserts that section 60(5) does not deprive the Respondent of its legitimate costs for carrying out work which properly falls as recoverable within section 60(1). Following the Applicant's logic, any work undertaken after the application to the Tribunal in accordance with directions made by the Tribunal would not be recoverable. Section 60(5) refers to litigation costs.
19. The Respondent admits that it sought to include additional provisions in the lease which were later conceded. Such additional provisions are permitted by the Act with the consent of both parties in accordance with section 57(6). Negotiations and drafting in respect of such provisions are a normal part of the work involved in granting a long residential lease.
20. It is accepted that a degree of duplication was involved but the Statements take account of the time actually spent and recorded on each matter. In any event, duplication could only occur in one case and to reduce the costs in both cases on the same ground is clearly unreasonable.
21. Finally, the Respondent states that the statement of costs allows for 2 hours of other work at £105 per hour to recover reasonable costs following completion of the lease.

Conclusions

22. The Applicant complains that the Respondent's statement lacks detail as to the particular work done by each fee earner and says that it is

difficult to establish from the time ledger annexed to the statement of costs the allocation of the activity to the relevant subsection of the Act.

23. The Respondent denies this and claims that its detailed breakdown of the activities of each fee earner is sufficient within the terms of the "broad brush" approach which the Tribunal is required to apply.
24. The Tribunal agrees with the Applicant. The information given is vague in places and lacks sufficient detail to enable the Tribunal to assess what was actually done or why in many instances. For example, in the Statement of Costs for Flat 1, in the list of costs under subsection (1)(a) and (c) is a heading "Other work not referred to above" but there are no details of the type of work, the fee earner or the dates and so it is impossible to match this with the schedule of activity. References in the schedule to "Reading", "Drafting", "Consideration time" and so forth give no indication of the documents to which they relate.
25. The Tribunal's statutory duty is to consider whether the costs claimed were reasonably incurred in dealing with the specific matters set out in section 60 of the Act. It is accepted that if work is carried out by a junior fee earner it will take longer but will be charged at a lower rate. However, there can come a point where the actual total charge becomes more expensive because of the extended time. For example, on Flat 1, the total drafting time by Ms Lebish is 5.5 hours; it is not clear whether this is on the counter notice and the new lease, but even if it covers both, a Grade B fee earner ought to be able to complete the drafting in a straightforward case at substantially less cost. Similarly, over 4 hours for consideration time and reading is far more than an experienced Grade B fee earner would require. The Tribunal hastens to add that this is not in any way a criticism of Ms Lebish who was no doubt being thorough and diligent within the bounds of her experience but it is a consideration of what cost is reasonable within the meaning of section 60.
26. In the absence of any evidence or representations to the contrary, the Tribunal assumes that the Respondent's solicitors have used a standard precedent for the new lease (which is what a client paying the costs himself would expect) and that there are no complications or legal issues which would require extra time to be spent on drafting.
27. The Tribunal agrees with the Respondent that Section 60(5) refers to litigation costs.
28. With regard to the attempt to include additional provisions in the lease, both parties appear to misinterpret section 57(6). The subsection provides that the landlord and tenant may agree any variations to the new lease that they wish and either may require modifications as set out in subsections (6)(a) and (b). The landlord's solicitors are entitled to propose alterations and the costs involved in doing so will be recoverable if those proposals are reasonable. The fact that they were eventually conceded in full by the Respondent does not render them or negotiations regarding them unreasonable.

29. In this case, the Tribunal assumes that the relevant proposals are those set out in paragraph 3.3.(vi) of the Counter-Notice. These are proposals which the Respondent was entitled to make but we have no information as to the amount of time spent on negotiations. In the absence of any information, the Tribunal assumes that such negotiations were conducted by email, letter or telephone and are therefore included in the Attendances.
30. We do not agree with the Respondent regarding an allowance for duplication. The two applications appear to have been dealt with simultaneously and it is likely that both clients under those circumstances would expect the costs charged to reflect the savings arising from duplication of work. It would be inequitable for one client to pay the full amount and the other to receive a discount. The Tribunal considers that the proper course is for it to consider the costs in respect of the two flats "in the round", sharing the benefits of duplication between them. For example, the total of 9.4 hours for drafting on the two flats is patently excessive, assuming that the counter notices are in similar terms and the two leases are identical, no contrary evidence having been presented.
31. Assessing on the indemnity principle does mean resolving doubts in favour of the receiving party rather than the paying party. However, there is still a need for the Tribunal to consider what was reasonable. Rather than try to go through each item and undertake the almost impossible task of saying what would have been reasonable and which fee earner should have done the work, a broad brush approach will be taken and the Tribunal will assess what would be a reasonable level of costs in respect of each flat.
32. Doing the best it can with the limited amount of information given by the Respondent's solicitors, and using, of necessity, this broad brush approach, the Tribunal concludes that the hours claimed under subsections (1)(a), (b) and (c) are unreasonable.
33. Using its members' collective knowledge and experience in these matters, which is extensive, the Tribunal concludes that a reasonable amount of time for dealing with investigation of each tenant's right to a new lease, including work on documents, by a Grade B fee earner would be around one hour and we allow £200, plus the attendances amounting to £52.50, a total of £252.50.
34. The Tribunal considers the valuation fees of £900 on Flat 1 and £850 on Flat 2 to be excessive, particularly bearing in mind the duplication of work such as researching comparables and preparing spreadsheets. The Applicant's offer of £750 per flat is generous and the Tribunal adopts that figure.
35. A reasonable amount of time for a Grade B fee earner to spend on the lease documentation under subsection (1)(c) for both flats would be between 3 and 3.5 hours. A reasonable charge per flat would be £625,

plus the attendances, giving a total of £906.80 for Flat 1 and £866.50 for Flat 2.

36. The Tribunal cannot envisage what work would be required after completion of each lease that would take 2 hours. The only other relevant work would be lodging details with the Land Registry, if the titles are registered, or lodging a copy with the deeds if not registered. An allowance of £50 for such work is adequate.

37. In summary, the costs allowed under section 60 are –

	<u>Flat 1</u>	<u>Flat 2</u>
Under s.60(1)(a)	£252.50	£252.50
Under s.60(1)(b)	£750.00	£750.00
Under s.60(1)(c)	<u>£906.80</u>	<u>£866.50</u>
Total	£1,909.30 plus VAT	£1,869.00 plus VAT

Signed:

Date: 17th September 2010


D S Brown FRICS MCI Arb (Chair)