4005

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	LON/00AC/OC9/2015/0186
Property	:	Flats 1, 2, 3, 5 and 6, Queens Mansions, Watford Way, London NW4 3AN
Applicants	:	The leaseholders of the above flats
Representative	:	Mr Sulman Rahman & Mr Prakash Tanna
Respondent	:	Mr David Davis & Mr Solomon Israel Freshwater (landlords)
Representative	:	Ms Samantha Bone, Wallace LLP
Type of application	:	Section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal members	:	Judge Timothy Powell Mr Duncan Jagger MRICS
Date of determination and venue	:	17 June 2015 at 10 Alfred Place, London WC1E 7LR
Date of decision	:	17 July 2015

DECISION

Summary of the tribunal's decisions

The tribunal determines that the section 60 statutory costs payable by the leaseholders of flats 1 and 5 come to come £1,853.70 plus VAT of £370.74, i.e. a total of **£2,224.44**; and the costs payable by the leaseholders of flats 2, 3 and 6 come to £1,154.65 plus VAT of £230.95, a total of **£1,385.50**.

Background

1. This is an application made by the applicant leaseholders of Flats 1, 2, 3, 5 and 6, Queens Mansions, Watford Way, London NW4 3AN (the "property") pursuant to section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the reasonable costs payable by them under section 60(1) following the grant of new leases of the flats under section 48 of the Act.

2. On about 22 and 24 May 2013 the leaseholders of Flats 5 and 1 Queens Mansions, respectively, made a claim to acquire a new lease of their flats by way of a notice of claim. On or around 24/26 June 2013 the recipient of the notices, Metropolitan Property Realizations Ltd ("Metropolitan") through their solicitors Wallace LLP notified the leaseholders that their notices were invalid; in the case of flat 1 because the notice was unsigned and undated and in the case of flat 5 because the notice did not give less than two months from the date of the giving of the notice by which the landlord must respond by giving a counter-notice.

3. On or about 25-26 June 2013 the same leaseholders served fresh notices of claim, but without first having confirmed that the first notices were invalid. By letters dated 23-24 July 2013, Wallace LLP notified the leaseholders that their second notices of claim were invalid, because they had been given to Metropolitan, which was the head lessee and therefore an "other landlord" under the Act, whereas the "competent landlord" for the purposes of the Act was David Davies and Solomon Israel Freshwater.

4. By letters dated 2 August 2013 the leaseholders of flats 1 and 5 served their third notices of claim, dated 30 July 2013. At the same time, the leaseholders of flats 2, 3 and 6 served their first notices of claim seeking a lease extension, also dated 30 July 2013.

5. In respect of flats 1 and 5 there was further correspondence from Wallace LLP before the leaseholders accepted that their first and second notices of claim were invalid. Thereafter, Wallace LLP served five counter-notices, all dated 21 October 2013, all admitting that the respective leaseholders had the right to acquire a new lease of their flats, but making counter-proposals in respect of the premium to be

paid and lease terms. There was no head lease in respect of flats 2, 3 and 6.

6. On 15-16 April 2014 the leaseholders made an application to the Property Chamber seeking a determination of the outstanding terms of acquisition for a new lease for their flats. The terms of the acquisition were agreed between the parties around 18 July 2014 and completion of the new leases took place between 10-11 March 2015.

7. In the absence of an agreement in respect of the statutory costs payable by the leaseholders in respect of the lease extensions, on 16 April 2015 the leaseholders made an application to the Property Chamber seeking a determination of those costs.

The statutory provisions

8. Section 60 of the Act provides:

60 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.

Directions and the schedules of costs

9. The tribunal issued its standard costs directions on 20 April 2015, providing for the landlords to send the leaseholders a detailed schedule of costs for summary assessment by 4 May 2015, for the leaseholders to provide a statement of case in relation to those costs by 18 May and for the landlords to send any statement in response by 25 May 2015. It was the leaseholders' responsibility to file hearing bundles by 1 June 2015. The tribunal was content to determine the matter on the papers in week commencing 15 June 2015, unless either party requested an oral hearing, in which case the matter would be dealt with at a hearing on 17 June 2015.

10. Due to what the unrepresented leaseholders claimed had been a misunderstanding of the directions, the hearing bundles were not filed with the tribunal by the 1 June 2015. As a consequence, on 11 June 2015, Wallace LLP acting on behalf of the landlords filed their own bundles, which included a detailed submissions on costs, copies of the various notices of claim, letters between the parties, counter-notices and specimen leases, together with a detailed schedule of costs with a breakdown of the work undertaken in respect of the five lease extensions, various time records and previous tribunal decisions, upon which the landlords relied. On the following day, the leaseholders lodged their own hearing bundles repeating some of the documentation but also including the leaseholders' statement disputing the legal costs and several (other) tribunal decisions.

The hearing

11. As the leaseholders had requested oral hearing, it took place on 17 June 2015. The leaseholders appeared in person and were represented by Mr Rahman and Mr Tanna. The respondent was represented by Ms Bone, solicitor, of Wallace LLP, assisted by Ms Nyame.

12. A few additional documents were handed up by the landlords' solicitors, which included a very recent decision by another tribunal in relation to the costs of Wallace LLP together with various official copies of the registers of title at the property.

The leaseholders' case

13. As the landlord's valuation fees, land registry fees and courier fees had been all agreed by the leaseholders, the only matters for determination by the tribunal were the amounts charged by the landlords' solicitors in

respect of legal costs relating to the lease extensions. The landlord had claimed legal costs of £3,300, inclusive of VAT, for the lease extensions for flats 1 and 5 and legal costs of £1,900, inclusive of VAT, for flats 2, 3 and 6. These sums were equivalent £2,750, exclusive of VAT (rounded down from £2,761.95 in the schedules), and £1,600, exclusive of VAT (rounded down from £1,621.90 in the schedule).

14. The leaseholders disputed the costs as a whole, which they said were too high for the transactions involved. They also had specific disputes on specific items claimed. Their disputes were contained at pages 40 and 50-55 of their bundle. They stated that:

> "all the claim notices are identical and were served on the landlord and at the same time. All the leases are almost identical and all the counter notices were served by the landlord at the same time. The work required would have been almost identical for extending the five leases. Therefore the legal costs should be the same. The differences in the legal costs claimed reduce the credibility of the sums claimed".

15. The leaseholders went on to say that "the work was done collectively [by the landlords' solicitors] with consequently huge savings in time". They referred to a previous tribunal decision that had determined a charging rate of £320 per hour and 3 hours' time would be reasonable for the landlord's legal costs which, equated to £1,152, including VAT, as a reasonable charge. However, by the time of the hearing, they had come to the conclusion that "the time costs claimed may have been inflated three to ten times more than the actual time costs incurred" so that "our previous estimate of £1,152 now appears to be an over-estimate" and "legal costs of approximately £600 (inc. VAT) per flat would be a generous amount for the landlord's legal costs".

16. With regard to the work done by the landlords' solicitors, numerous references were made to the time sheets being "grossly exaggerated", to the fact that work carried out did not necessarily require the expertise of a partner and not all of the work was necessary. Complaint was made that the time was charged in respect of each individual lease extension, when the work could and should have been done "with all the five claims at the same time as a single task", or with flats 1 and 5 together and flats 2, 3 and 6 together.

The landlords' case

17. The landlords' solicitors made detailed submissions on costs, which set out the backgrounds to the five lease extensions, drawing a clear distinction between flats 1 and 5 and flats 2, 3 and 6. The costs for the former "are higher because in both cases section 60 costs were incurred investigating three separate sequential notices of claim." The schedule of costs indicates the level of fee earner and the charging rate applied for the work in question, together with a detailed narrative in each case

explaining the work behind each activity. The initial partner's charging rate as a grade A fee earner was £375 per hour, rising to £395 per hour from August 2013, together with a paralegal at £150 per hour. Additionally, a partner in the conveyancing department undertook work preparing the draft lease forming part of the landlords' counter-proposals in the counter-notice. The conveyancing partner's charging rate was £410 per hour and their assistant solicitor, also a grade A fee earner, had a charging rate of £285 per hour, rising to £300 per hour in August 2014.

18. Wallace LLP had been acting for the landlords for many years dealing with enfranchisement matters. They are the landlords' choice of solicitors "and have the knowledge and capacity to deal with this work on their behalf". The charging rates are consistent with those for solicitors in central London and "it is reasonable for a fee earner with relevant experience to have conduct of the matter and to perform the work on the same". As to the principles that the tribunal should consider, reference was made to whole serious of previous tribunal decisions.

19. Wallace LLP justified the use of a partner due to the complex provisions of the 1993 Act and the need to consider each case carefully and individually, and to ensure that the counter-notice was properly completed. It was submitted that the time taken by a partner "at a higher rate" to undertake the tasks set out in the costs schedule would be less than that required by a lower level fee earner (albeit at a lower charging rate). In any event, different aspects of the case had been dealt with by different fee earners: by the litigation and property partners at the initial stages; by a litigation assistant for the matters following service of counter-notices; and by a paralegal for obtaining official copies of title and copy lessees.

The principles

20. The proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of a freehold or the extension of a lease, was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That decision (which related to the purchase of a freehold and, therefore, costs under section 33 of the Act, but which is equally applicable to a lease extension and costs under section 60) established that costs must be reasonable and have been incurred in pursuance of the initial notice and in connection with the purposes listed in sub-sections [60(1)(a) to (c)]. The applicant tenant is also protected by section 60(2) which limits recoverable costs to those that the respondent landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.

21. In effect, this introduces 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 landlord should only receive its costs where it has explained and substantiated them.

22. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.

23. The respondent landlords rely upon comments of numerous previous tribunal judges in support of its claim for costs. While none of those previous decisions is binding on this tribunal, some of the findings may be of persuasive authority. In particular, the respondent quotes and relies upon the comments of Professor Farrand QC in the decision in *Hampden Court* (LON/ENF/785/02) where, at paragraph 27, he stated:

> "In substance leasehold enfranchisement may be regarded as a form of compulsory purchase from an unwilling seller at a bargain price. Accordingly, it would be surprising if reversioners were expected to be further out of pocket in respect of their inevitable incidental expenditure incurred in obtaining the professional services of valuers and lawyers for a transaction and proceedings forced upon them.
>
> Parliament has indeed provided that this expenditure is recoverable from the Nominee Purchaser subject only to the requirement of reasonableness..."

24. This is not the same as saying that a landlord can recover all of his costs on an indemnity basis, regardless of what agreement it had reached with his professional advisers. Although enfranchisement is often characterised as a form of compulsory purchase from an unwilling seller, this concept does not sit easily with the reality of individuals and companies buying up tens, hundreds or thousands of freehold reversions by way of investments, on the basis of a business model which relies upon the income arising from enfranchisement sales under the Act.

The tribunal's determination

25. The tribunal determines that the section 60 statutory costs payable by the leaseholders of flats 1 and 5 come to come £1,853.70 plus VAT of £370.74, i.e. a total of **£2,224.44**; and the costs payable by the leaseholders of flats 2, 3 and 6 come to £1,154.65 plus VAT of £230.95, a total of **£1,385.50**.

Reasons for the tribunal's determination

26. The tribunal's task is essentially to look at the work that was carried out, all the surrounding circumstances of the transactions and the parties involved. In the present case, the landlord's solicitor, by her own submissions, has worked for these particular landlords for many years in enfranchisement matters such as these.

27. In these circumstances, the tribunal accepts that it is reasonable for these landlords to make use of Wallace LLP as their solicitors of choice. The firm's charging rates are at the very upper end of the guideline rates issued by the Senior Courts Costs Office, though the tribunal is aware that those rates have not changed since 2010.

28. The tribunal also willing to accept that there is sufficient complexity and importance in enfranchisement work to justify the use of a partner, at least in the initial stages of transactions (as here).

29. In the present cases, the questions are the extent, if any, that economies of scale could and should have been achieved by dealing with several similar flats in one block and/or the extent to which the transactions had to be dealt with individually and/or whether solicitors of such undoubted experience, expertise and familiarity with this type of work, such as Wallace LLP, should have taken less time than has been claimed in the present case.

(A) Costs claimed in connection with Flats 1 and 5

30. On 31 May 2013 two lots of 0.6 hours of a partner's time were recorded as having been spent assessing the notice of claim. However, given that one of those had not been signed and dated and the other had failed to give two months for the counter-notice, these are defects which an experience solicitor would have appreciated in a matter of seconds rather than minutes. Although perhaps an assessment of other aspects of the notice may have been for necessary and although, as Ms Bone stated in oral submissions, a commercial view might have to be taken as to whether to accept the notices despite their defects, is hard to see how more than two lots of 0.2 hours could be justified for this work. Having said this, the tribunal is willing to accept that the drafting of letters on that date were justifiably carried out by the partner seized of the matter and it was not appropriate, as the leaseholders claimed to delegate this task to a paralegal.

31. The tribunal also considers, here and generally, that it is good practice to separate out the various flats individually and to write letters separately on each, rather than take the risk of mixing up properties in one letter. Although that may appear to the leaseholders' to involve duplication, there are risks involved by joining matters together, for

example the recipient of the letter may fail to appreciate it covers more than one property. It is also often the case in practice that different claims follow different routes, so that individual letters are necessary from the outset.

32. Once the official copies of title and leases had been obtained by a paralegal on 3 June 2013 (which the leaseholders agreed was reasonable), the tribunal disagrees with the leaseholders when they claim that it was not then appropriate for a partner to consider those documents and write further letters.

33. With regard to the consideration, on 3 July 2013, of the second notices of claim, the tribunal noted the concession by Ms Bone that she would claim not two lots of 0.6 hours, but two lots of 0.4 hours. While the tribunal does not accept the leaseholders' view that 0.1 hour for both flats was the most to be allowed, the comments in relation to the first notice of claim apply in relation to the second, namely that the defects of naming the wrong landlord in the notice (in fact probably apparent when the first notice was received) would only take an experienced solicitor a matter of seconds to identify. Therefore, bearing in mind the other matters in the narrative of the schedule, the tribunal would reduce the reasonable time spent to two lots of 0.2 hours.

34. The letter and e-mail on 3 and 19 July 2013 were agreed. However, the leaseholders disputed that the conveyancing partner should have spent two lots of 0.5 hours preparing a draft lease and litigation partner 0.2 and 0.3 hours respectively for considering the valuation reports. While this work perhaps came at an early stage given that no counter-notice had been served admitting the validity of the claim, ultimately it was work done that led to the grant of the new leases and it is claimable under the terms sections 60. However, the circumstances of flats 1 and 5 were similar so that, once one lease had been prepared, it was inevitable that less time would be needed for the second lease, based on the same template. Rather than allocate a higher amount of time for one flat and the lower amount for another, the tribunal allows two lots of 0.4 hours of the conveyancing partner's time, as an average.

35. With regards to the valuation report, this was not seen by the tribunal. In practice, the litigation solicitor is really only concerned with the amount of premium proposed and whether the valuation report throws up any additional matter, for example a breach of covenant. These are matters which an experienced solicitor would identify very quickly from the valuation report and, having seen the first valuation report, the second similar report would take even less time. Similar to the previous item, the tribunal would allow two lots of 0.15 hours of the litigation partner's time for this item.

36. The consideration of title documents on 23 July 2013 was agreed and the following three letters were accepted by the tribunal as being

necessary for a partner to deal with on an individual basis for flats 1 and 5.

37. With regard to the two items on 6 August 2013, the consideration of the third notice of claim for flats 1 and 5, once again Ms Bone made a concession of two lots of 0.4 hours, in place of the 0.6 hours claimed. Given that these notices were apparently valid, additional time was justified by the landlords' solicitors to make absolutely sure, and the tribunal was therefore willing to accept that concession. The following two letters on 6 and 14 August 2013 are justifiably sent by a partner and the tribunal does not accept the leaseholders' suggestion that this work should have been delegated. The e-mail on 14 August and documents on 16 September 2013 were both withdrawn.

38. On 8 October 2013 the landlords' solicitors claimed two lots of 0.7 hours for the preparation of the counter-notice. The tribunal accepts this is a document of crucial importance to any landlord, that it must deal appropriately with the proposals that had been made in the notice of claim and it must include any counter-proposal that the landlord wishes to make; and consequences of failing to do so may be dire. Having said that, by this stage the landlords' solicitors have already checked the notice of claims in detail, had received valuation evidence on the appropriate premium and had drafted the proposed lease. Accordingly, there appears to be duplication here and the time putting these elements together into what amounts to a one-page counter-notice is excessive. The tribunal would allow two lots of 0.3 hours for flats 1 and 5.

39. The paralegal work on 21 October 2013 was agreed. The tribunal accepts the partner's time and letters on the same date, believing that at this stage, for continuity and certainty, it was necessary that the partner seized of the matter should be responsible for the service of the notice. However, from that point it would be appropriate for the remaining aspects of the transactions to be dealt with by an assistant solicitor and, indeed, this is what has occurred. Much of the assistant's time in dealing with the matter to completion was agreed by the leaseholders.

40. There was one concession on the 21 August 2014 where the preparation of the lease engrossment had been charged as having been done by an assistant, but the landlord was willing to claim at the lower paralegal's charging rate, which was then agreed. Those items still challenged were nonetheless accepted by the tribunal as being necessary and reasonable, and acceptably dealt with as a separate matter by the assistant, save for the item on 18 July 2014. The completion statements, although each one was different and there no duplication, these remained simple documents to prepare from information, whether on paper or on electronic files, the tribunal struggles to see that an assistant should or could have taken two lots of 0.5 hours to prepare to these. Accordingly, the tribunal allows two lots of 0.3 hours.

(B) Costs in connection with flats 2, 3 and 6

41. The costs claimed in relation to flats 2, 3 and 6 were lower because the first initial notice in each case proved to be valid and because there was no complicating head lease. The comments in this section relate to all three of the flats.

42. The first item was the time spent considering the notice of claim in each case, on 6 August 2013. The claim is for the partner's time, 3 lots of 0.6 hours. The landlords' concession in respect of the third notice of claim for flats 1 and 5 (reducing the claim for 0.6 hours each to 0.4 hours) was not repeated for flats 2, 3 and 6. The tribunal's view is that the consideration of the initial notices, which on the face of it were valid, did require the expenditure of partner's time to check and to double-check the entries and to carry out the reviews set out in the landlords' narrative schedule. However, the three were similar so that by the time the notices in respect of the second and third flats came to be considered, it is inevitable that less time would be involved. The tribunal is therefore willing to allow three lots of 0.4 hours in respect of this item.

43. The other items such as letters and obtaining office copies entries are the same as for flats 1 and 5. The tribunal is satisfied that it makes sense to treat each claim individually, with its own separate file. There was no guarantee that each of the claims would proceed in exactly the same fashion, there could always be a variation and whereas one extension may proceed to completion, another may not for different reasons. Although dealing with similar leases and similar extensions in the same block, there is a risk that if the matters are combined in correspondence important matters will be missed and errors would occur.

44. On 30 September 2013, an assistant was engaged for three lots of 0.7 hours preparing the draft lease. Once again, this work came before the service of the counter-notice admitting the claim, but it was work which would eventually be needed and was useful leading up to the eventual completion of the lease extensions. Although the assistant spent longer on this work than a partner had done in respect of flats 1 and 5, similar considerations apply, namely that once the first lease had been prepared, it was inevitable that the subsequent leases would involve less time, involving as they did effectively a duplication of the same terms. The tribunal would therefore allow three lots of 0.4 hours, for this item rather than the three lots of 0.7 hours claimed.

45. Similar considerations arise in relation to the consideration of the valuation reports for these three flats on 11 October 2013. Rather than three lots of 0.3 hours claimed, the appropriate reasonable charge would be 0.15 hours each.

46. With regard to the drafting of the counter-notice on 8 October 2013, once again similar factors apply to these flats as applied above in relation to flats 1 and 5. There were elements of duplication here, given that the landlords' solicitors had already checked the notices of claim, had received professional advice about the level of premium and had drafted the leases. The three lots of 0.7 hours for drafting and finalising the counter-notice, a one-page document in each case, cannot be justified and the tribunal would allow three lots of 0.3 hours for this work, taking into account the undoubted need to ensure that the counter-notice included reference to the landlords' proposed premium and preferred terms in the draft lease.

47. The preparation of the completion statements on 18 July 2014 involved claims for two lots of 0.3 and one 0.4 hours. Given the simple nature of these completion statements, but bearing in mind the need for it to be accurate and reflecting the different service charge provisions in each case, the tribunal would allow the three lots of 0.2 hours.

48. A concession was made that paralegal could and should have done the work preparing the lease engrossments on 21 August 2014, rather than an assistant, so that the lower charging rate of £150 per hour should apply to that work.

49. The other items in relation to letters and time spent either been agreed or follow the same pattern as flats 1 to 5.

Summary

50. Standing back from the transaction, the overall costs claimed appeared to be too high. While individual attention had to be given to each of the notices of claim and each of the lease extensions and transactions, there was inevitably a degree of duplication and therefore economies of scale by dealing with similar flats in the same block in tandem. Taking into account these issues and the specific deductions made from the time spent, the tribunal concludes that the appropriate reasonably statutory section 60 legal costs payable by the leaseholders of flats 1 and 5 come to come £1,853.70 plus VAT of £370.74, i.e. a total of **£2,224.44**; and the costs payable by the leaseholders of flats 2, 3 and 6 come to £1,154.65 plus VAT of £230.95, a total of **£1,385.50**.

Name: Judge Timothy Powell **Date:** 17 July 2015