



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

**Case reference** : **LON/00BJ/OC9/2015/0366**

**Property** : **Premises (23 flats) at John Archer Way, Coates Avenue & Scott Close, London SW18**

**Applicants** : **The 23 leaseholders listed in the application**

**Representative** : **Philip Ross, solicitors**

**Respondent** : **Freehold Managers (Nominees) Limited (landlords)**

**Representative** : **Hatchers Solicitors LLP**

**Type of application** : **Section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993**

**Tribunal members** : **Judge Timothy Powell  
Mr Richard Shaw FRICS**

**Date of determination and venue** : **22 October 2015 at  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **22 October 2015**

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**DECISION**

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## **Summary of the tribunal's decision**

The tribunal determines that the section 60 statutory valuation costs payable by the leaseholders of the 23 flats at John Archer Way, Coates Avenue & Scott Close, London SW18, referred to in the application, come to come £299 plus VAT of £59.80, i.e. a total of **£358.80** per flat.

## **Background**

1. This is an application made by the applicant leaseholders of 23 of the flats at John Archer Way, Coates Avenue & Scott Close, London SW18, referred to in the application (the "properties") 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 two different dates, 31 January 2014 and 9 June 2014, some 28 (or according to subsequent correspondence, 29) leaseholders claimed to acquire a new lease of their flats by way of a notice of claim. The respondent freeholder instructed Mr Alastair Mason FRICS of Bunch & Duke, chartered surveyors, to carry out valuations of the flats. The first 22 lease extensions completed in the week beginning 1 June 2015. The remaining 6 extensions completed about seven weeks later (it being unclear from the papers what happened to the 29th claim).
3. At the time the 22 flats completed, the landlord's legal fees were £822 inclusive of VAT per flat and the landlord's valuation costs were £450 plus VAT per flat; which sums were paid on completion.
4. At about the time the remaining 6 flats completed, the applicants' solicitors, Philip Ross & Co, sent a letter on 16 July 2015 to the landlord's solicitors, Hatchers LLP, challenging (a) the level of the landlord's legal costs in respect of the remaining 6 flats, and (b) the landlord's valuation costs in respect of all 28 flats. Philip Ross & Co indicated that they would agree legal costs of £822 inclusive of VAT for the remaining 6 flats, and valuation costs of £250 per plus VAT for all 28 flats, citing the repetitive nature of the valuation work.
5. By email dated 22 July 2015, the respondent's solicitors indicated that "our client's valuer has agreed to reduce his fees to £250 plus VAT" and "we agree to our fees being £822 (incl of VAT)". The email went on to refer to the impending completion of the remaining 6 flats. As completion monies had already been remitted to Hatchers, a refund of legal and valuation costs in respect of the 6 flats was made by letter dated 27 July 2015.

6. When, on 5 August 2015, Philip Ross & Co requested similar refunds in valuation fees in respect of the 22 flats that had completed earlier, Hatchers responded in the following terms, on 7 August 2015:
- “I have today spoken with our client’s valuer. The first 22 matters completed on the week beginning 1 June 2015. At that time there was no question raised over our client’s valuer’s fees and his fees were paid in full. It was seven weeks later, when the remaining 6 properties were due to complete, that the question of our client’s valuer’s fees was raised. As his fees were paid in full on completion of the first 22 matters without question he is not prepared to agree to reduce those fees retrospectively. If there was any query over the valuation fees on the first 22 matters it should have been raised before they completed and the bills paid. The valuer agreed to reduce his fees on the remaining 6 matters out of goodwill as there was a delay in completing these matters. He would not have agreed at any point to reduce his fees for the valuations on all the properties.”
7. While the exchange of the letter and email on 16 and 22 July appears, on the face of it, to relate to all 28 flats, the respondent’s solicitors had clearly rowed back from any such notion by 7 August. In the absence of agreement, the applicants applied to the tribunal for a determination of the reasonable valuation fees that they should pay as part of the landlord’s statutory costs.
8. The application was received by the tribunal on 21 August 2015 and standard costs directions were issued on 25 August. These provided for the exchange of documents and filing of bundles, with a determination on the papers in the week commencing 19 October 2015. Alternative provision was made for an oral hearing on 21 October, but neither party requested one.
9. The applicants’ solicitors have not suggested that the exchange of the letter and email on 16 and 22 July constituted a binding agreement, but they do say that there was significant duplication of work on the part of the respondent’s valuer, which should be reflected by a reduction in the amounts charged to the individual leaseholders. The tribunal notes the background documents supplied and the submissions of the parties, and proceeds on the basis that it will make a fair assessment of the work and charges appropriate to the lease extensions.

### **The statutory provisions**

10. The relevant parts of section 60 of the 1993 Act provide:

**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.

### **The tribunal's determination**

11. Essentially, the tribunal's task is to look at the work that was carried out by the valuer, all the surrounding circumstances of the transactions and the parties involved.
12. The hearing bundle contained a witness statement dated 15 September 2015 from the valuer, Mr Mason. This gave details of the work that he carried out and the valuation charges that resulted from that work. Mr Mason is a very experienced valuer, having been in practice in London for some 42 years. Over the past 5 years (and before) he has dealt with, on average, some 400 enfranchisement valuation cases.
13. On the basis that there were 23 (not 22) flats involved in the application, Mr Mason says that there were 4 different property types and 3 different valuation dates, resulting in the need for 6 different valuations. According to his Property Schedule, the third valuation date was 11 August 2014, in respect of 49, John Archer Way only; though, in a letter of 6 October 2015, Philip Ross & Co sought to exclude this property, claiming that it did not form part of the current tribunal application (although it clearly *does* appear in the schedule attached to the application form: so perhaps that explains the discrepancy between there being 22 or 23 flats).
14. According to Mr Mason, he spent 3.10 hours (i.e. 3 hours and 6 minutes) on each flat, which he submitted was not an unreasonable amount of time. As there was no challenge to his standard hourly rate of £230 plus VAT, he felt able to justify a charge of £713 (£230 x 3.1) plus VAT per flat. However, he recognised that "in undertaking these

valuations there was an element of repetition - though not to the extent suggested by Philip Ross Solicitors” and, accordingly, he had already reduced his charges to a flat rate of £450 plus VAT for each flat, a reduction of some 37%, or just over 1.1 hours’ worth.

15. Looking at the work carried out by Mr Mason, as set out in his list of “Time Costs for each property”, the tribunal determines that the following are the averaged-out reasonable times spent and consequent valuation costs, for each of the flats concerned:

| Item  | Hours claimed  | Hours offered by applicants | Hours allowed by tribunal |
|---|----------------|-----------------------------|---------------------------|
| 1. Receiving instructions from Client in each case to provide valuation advice as to the premium payable for a lease extension in accordance with the provisions of the Act. Printing out documentation (received electronically) & making up the file:   | 0.3            | 0.1                         | 0.1                       |
| 2. Reading section 42 notices and lease documentation, checking validity:   | 0.4            | 0.0                         | 0.2                       |
| 3. Identifying flat type and valuation criteria, including flat type, valuation date, and appropriate capitalisation and deferment rates:   | 0.4            | 0.4                         | 0.4                       |
| 4. Researching databases to ascertain current market values (as at each valuation date) - obtaining relevant historic sales details and making appropriate adjustments for HPI increases etc. Speaking with selling agents to ascertain details of sales “in train” at valuation date and analyzing data to apply to the value of each individual flat: | 0.75           | 0.2                         | 0.2                       |
| 5. Preparing valuation calculations and preparing and submitting valuation report to client:  | 1.25           | 0.3                         | 0.4                       |
| <b>Total time engaged (per property)</b>  | <b>3.10</b>    | <b>1.00</b>                 | <b>1.30</b>               |
| Time cost charge per property @£230 per hour (ex VAT)   | £713.00        | £230.00                     | £299.00                   |
| <b>Time cost charge per property claimed/ allowed (ex VAT)</b>  | <b>£450.00</b> | <b>£230.00</b>              | <b>£299.00</b>            |

## **Reasons for the tribunal's determination**

16. The reasons for the tribunal's determination are as follows. The tribunal's view is that while different valuations had to be carried out, once the first valuation for each property type had been done, there would inevitably be considerable repetition in the carrying out of subsequent valuations, given the volume of claims. Although Mr Mason has factored these in to an extent, the tribunal was not satisfied that the reduction he made was sufficient to take into account such repetition and duplication.
17. With reference to the list of Time Costs above, the time spent under item 1 is largely administrative work, of a non-fee-earning kind. Had the full time claimed been allowed, some 8.4 hours (a full day, without breaks) would have been spent on what was essentially printing out section 42 notices and letters of instruction. Allowing 0.1 hour or 6 minutes per flat is, it is suggested, generous for this work (equating as it does to a total of 2.8 hours overall, for all 28 flats).
18. With regard to item 2, the applicants offered no time as they considered the checking of section 42 notices and lease documentation and checking their validity to be duplication of work carried out by the instructing solicitors. The tribunal can see the force in this argument, but does not agree that the valuer has no need to examine the notice or check the lease. These would be important steps in the valuation process, not only to check the valuation date in each case, but also to determine the term and rent levels. However, having done this for the first of each type of property lease, the work involved for subsequent flats of the same kind would have been significantly less. The tribunal therefore allows an average of 0.1 hour or 6 minutes per flat for this work.
19. The applicants agreed the 0.4 hours claimed by the valuer for his work in relation to item 3, which the tribunal endorses.
20. The applicants objected, however, to the 0.75 hours or 45 minutes per flat spent by the valuer for item 4. Over the 28 flats, this would equate to 21 hours or three full days' work. Given that the market research data for the flats would be largely similar, being all in the same area, and given the relatively small differences between them, according to lease type, size and whether they were 1 or 2 bedrooms, the tribunal considers that the total time spent is unreasonable. It is noteworthy that the Property Schedule sets out the agreed valuations for the flats in question, many of which are similar. For example, there are 5 flats valued at £7,960, 7 flats valued at £9,100, and 5 flats valued at £9,300. The tribunal considers that a total of 6 hours would have been sufficient for this work, which once spread over all 28 flats would allow 0.2 hours or 12 minutes per flat.

21. Finally, the applicants offered 0.3 hours or 18 minutes per flat for the time spent by the valuer in respect of item 5 (the preparation of valuation calculations, and preparing and submitting a valuation report to his client), in place of the 1.25 hours per flat claimed by the valuer. Mr Mason stated that there were 6 entirely different valuations, based on there being 4 different property types, which required reports at 3 different valuation dates. The total time claimed equated to 35 hours, or a whole working week. While the tribunal was not shown either the calculations or the reports, it is of the view that once the parameters of any particular valuation had been set up on a spreadsheet - which obviously takes time to do - the subsequent work to create valuations of similar property types would have been a straightforward matter of inputting new data. The tribunal considers that nearer 11 hours in total would have been sufficient for this work, giving rise to an averaged 0.4 hours or 24 minutes per flat.

### **Summary**

22. Standing back from the transactions, the overall valuation fees claimed appeared to be too high. While individual attention had to be given to each of the flats, there was inevitably a significant degree of repetition and duplication - and, therefore, economies of scale - by dealing with similar flats in the same area in tandem. Taking into account these issues and the specific deductions made from the time spent, the tribunal concludes that the appropriate reasonable statutory section 60 costs payable by the applicant leaseholders in respect of the valuation fees come to £299, plus VAT of £59.80, i.e. a total of **£358.80** per flat.

**Name:** Judge Timothy Powell

**Date:** 22 October 2015