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

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| **Case Reference** | **:** | **MAN/00BS/OC9/2020/0001 P** |
| **Property** | **:** | **22D Bowerfold Lane**<br>**Heaton Norris**<br>**Stockport**<br>**SK4 2LT** |
| **Applicant** | **:** | **Mr D Hawthorne** |
| **Representative** | **:** | **N/A** |
| **Respondents** | **:** | **Mr & Mrs J S Englander** |
| **Representative** | **:** | **Rice-Jones & Smiths** |
| **Type of Application** | **:** | **Leasehold Reform, Housing and Urban Development Act 1993 – s60** |
| **Tribunal Members** | **:** | **Judge J Holbrook**<br>**Regional Surveyor N Walsh** |
| **Date and venue of Hearing** | **:** | **Determined without a hearing** |
| **Date of Decision** | **:** | **18 May 2020** |

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**DECISION**

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## DECISION

**The reasonable costs payable by the Applicant under section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 comprise legal costs of £561 (inclusive of VAT) and valuation costs of £400.**

## REASONS

### Background

1. On 5 February 2020, the Applicant applied to the Tribunal under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 for a determination of the amount of the costs payable by him to the Respondents under section 60(1) of that Act. The Tribunal gave directions for the conduct of the proceedings on 17 February 2020. It informed the parties that it considered this matter suitable for a determination without an oral hearing unless either party notified the Tribunal that it wished a hearing to be listed. As no such notification was received, we proceeded to determine the matter on the basis of the evidence provided in the application and in written submissions provided by the parties in response to directions.

### Law

2. Section 60(1) of the 1993 Act provides that:

   *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.*

3. Section 60(2) provides the following additional safeguard for tenants:

   *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.*

4. It is made clear by section 60(5) that a tenant is not liable under the section for any costs which a party to any proceedings before the Tribunal incurs in connection with those proceedings.

5. The purpose and effect of the 1993 Act's provisions on the reimbursement of costs was considered by the Upper Tribunal (Lands Chamber) in *Metropolitan Property Realizations Limited v Moss* [2013] UKUT 0415 (LC). At paragraphs 9 – 11 of his judgment in that case, Judge Martin Rodger QC described the statutory provisions in the following terms:

> "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.
>
> 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. Section 60(2) provides a ceiling by reference to the reasonable expectations of a person paying the costs from their own pocket; the costs of work which would not have been incurred, or which would have been carried out more cheaply, if the landlord was personally liable to meet them are not reasonable costs which the tenant is required to pay.
>
> 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."

## Consideration of disputed costs

6. In the present case, it is not disputed that the Applicant is liable to pay the Respondents' reasonable costs under section 60(1) of the 1993 Act. However, the parties disagree about the amount which it is reasonable for him to pay. The Respondents claim legal costs of £742.50 plus VAT; legal disbursements of £21 (for obtaining office copy entries) and a valuation fee of £750 (no VAT is claimed in respect of this fee). The Applicant contends that it would be reasonable for him to pay legal fees of just £180 (plus the disbursements) and £250 for the valuation fee.

7. The Respondents provided an itemised schedule of work in support of their claim for legal fees. The costs claimed represent the fee charged for 3.3 hours work carried out by an experienced (but unqualified) "legal executive" charging £225 per hour. The Applicant considers that (based on published government guidelines) £111 would be a more appropriate hourly rate in this case. He also considers that the chargeable time he must pay for should be limited to 1.6 hours.

8. The government guidelines on solicitors' charging rates, to which the Applicant refers, divide fee-earners into four bands, depending on their level of qualification and experience. The Applicant argues that, because the relevant fee-earner in this case is not a qualified legal executive – he is not a Fellow of the Chartered Institute of Legal Executives – the appropriate band is Band D. Band D is reserved for those fee-earners who do not count as "other solicitors or legal executives and fee-earners of equivalent experience" for the purposes of Band C (and "other" here connotes solicitors or legal executives with four years' experience or less). We note that the fee-earner in this case, whilst unqualified, has been employed as a conveyancer since 1977. We therefore find him to be a fee-earner of at least equivalent experience to an individual who has been a qualified legal executive for four years. Band C is therefore the appropriate band.

9. The selection of an appropriate hourly rate within any given band depends upon the location of the fee-earner concerned, not upon the location of the subject property. The Respondents' solicitors are based in London EC1, and the appropriate 'London grade 1' hourly rate is thus £226. The Respondents are therefore entitled, under section 60(1) of the 1993 Act, to recover legal costs charged at or below this rate (provided that the condition in section 60(2) is satisfied – and there is nothing to suggest that it is not satisfied in this case).

10. As far as the totality of the legal work undertaken is concerned, the Applicant argues that it should have taken less than 3.3 hours to complete. We agree: we have seen nothing to suggest that this was anything other than a straightforward matter requiring a modest amount of legal work and advice on the Respondents' part. In our judgment, it is reasonable to allow a period of two hours for the completion of that work by an experienced conveyancer. This would give rise to a fee of £450 plus VAT thereon of £90. That is the amount we allow in this case, together with the £21 for legal disbursements.

11. Turning to the valuation fee, the Respondents claim £750. This is the fee charged by a member of the RICS for carrying out a desk-based valuation of the Property for the purpose of responding to the Applicant's lease extension claim. The Respondents have provided a schedule of the work undertaken by the valuer, which shows that he spent 3.4 hours on the matter at an hourly rate of £225. The Applicant argues that this is excessive, both in terms of the hourly rate and also in terms of the amount of time charged for.

12. The Respondents assert that an hourly rate of £225 represents a discount to the market norm for work of this nature, but no evidence has been offered to support this assertion and it is disputed by the Applicant. In our judgment and experience, an hourly rate of no more than £200 would be reasonable. As far as the time charged is concerned, we note that the valuer did not inspect the Property. Nor does he appear to have prepared a detailed valuation report. On the other hand, the task of performing the valuation would not have been entirely straightforward: it would have required the calculation of marriage value in relation to an unexpired term of 73 years; and researching comparable evidence to assess open market value, estimating a 'no Act' world. Balancing these factors, we find that the time likely to be required to complete the valuation exercise would probably have been about two hours. We therefore consider that a fee of no more than £400 is reasonable for that work. That is the amount we allow.