



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

2889

**Case Reference** : **BIR/00CN/OLR/2013/00038**

**Property** : **1 Ribble Court, Garrard Gardens,  
Sutton Coldfield, B73 6DL**

**Applicant** : **Mr and Mrs. W Forder**  
**Represented by Mr. K Anderson  
MRICS of Anderson Professional  
Services**

**1<sup>st</sup> Respondent** : **Friends Life Ltd**  
**Represented by Ms J Burrows of  
Gardiner Austin LLP**

**2<sup>nd</sup> Respondent** : **The Halliard Property Company Ltd**  
**Represented by Ms. F Neale of  
Wallace LLP**

**Date of Application** : **11<sup>th</sup> June 2013**

**Type of Application** : **Section 91(2)(d) Leasehold Reform  
and Urban Development Act 1993 (the  
Act)  
Determination of the costs payable by  
the lessee under section 60 of the Act**

**Tribunal** : **Mr. R T Brown FRICS  
Mr. P J Hawksworth**

**Date and venue of  
Hearing** : **24<sup>th</sup> September 2013  
Priory Court, Bull Street,  
Birmingham.**

**Date of Decision** : **21 NOV 2013**

---

**DECISION**

---

## DECISION

1. The Tribunal determines that the reasonable legal costs of the **1<sup>st</sup> Respondent** in dealing with the matters in section 60 of the Act are **£682.00 plus VAT (if applicable) plus disbursements of £80.00.**
2. The Tribunal determines that the reasonable legal costs of the **2<sup>nd</sup> Respondent** in dealing with the matters in section 60 of the Act are **£475.00 plus VAT (if applicable) plus disbursement of £80.00.**

## REASONS FOR DECISION

### Introduction

3. The Decision recorded in this document was made by the First-tier Tribunal (Property Chamber) rather than the leasehold valuation tribunal, to whom the application had been made, because by virtue of The Transfer of Tribunals Function Order (2013 No 1036) ('the Transfer Order') the functions of leasehold valuation tribunals were, on 1<sup>st</sup> July 2013, transferred to the First-tier Tribunal (Property Chamber). By virtue of the transitional provisions, applications to leasehold valuation tribunals in respect of which a decision had not been issued before the 1<sup>st</sup> July 2013, automatically became proceedings before the First-tier Tribunal (Property Chamber). The Transfer Order also amended the relevant legislation under which leasehold valuation tribunals were referred to by substituting the words 'First-tier Tribunal' for 'leasehold valuation tribunal' within the relevant parts of the legislation. The extracts from the legislation applicable to the present applications that appear below incorporate the changes made by the Transfer Order. In this Decision the expression 'the Tribunal' means the First-tier Tribunal (Property Chamber).
4. This is an application under section 91(2)(d) of the Leasehold Reform and Urban Development Act 1993 for the determination of the Freeholders reasonable legal costs.
5. Directions were issued on 18<sup>th</sup> July 2013. None of the parties submitted bundles in accordance with the time limits set out in Directions. However the Tribunal bearing in mind the 'overriding objective' (Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013) concluded that no party had been prejudiced as a result and accordingly proceed to determine the matter.
6. The Tribunal understands from the Applicant's agent that valuer's fees are not disputed. Freeholder £540.00 including VAT and Headleaseholder £300.00 including VAT.

## **The Law**

7. The relevant law is set out below:

### **Leasehold Reform and Urban Development Act 1993**

#### ***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.

## **Hearing**

### **The Applicant's case**

8. Mr Anderson attended the hearing on behalf of the Applicant. Neither the 1<sup>st</sup> or 2<sup>nd</sup> Respondent attended the hearing nor were they represented, however, their solicitors, Gardiner Austin and Wallace LLP respectively, made written representations.

9. The Applicant (leaseholder) contends for reasonable legal costs and disbursements plus VAT which Mr Anderson says should be £650.00 for the 1<sup>st</sup> Respondent. He makes no estimate for the 2<sup>nd</sup> Respondent, save that they must be reasonable.
10. At the hearing Mr Anderson made verbal representation to the Tribunal and relied upon his application and a bundle of correspondence forwarded to the Tribunal and the 1<sup>st</sup> and 2<sup>nd</sup> Respondent.
11. Mr Anderson said that the liability to pay was admitted and that he was asking the Tribunal to rule on the proposed costs of the Freeholder and Intermediate Leaseholder and whether such costs can be considered reasonable under the Act.
12. He referred the Tribunal to Section 60(2)...*'any costs incurred by the relevant person in respect of the professional 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'*
13. In particular Mr Anderson asked the Tribunal to consider:
  - (a) The Act is worded to provide the leaseholder protection against unreasonable costs.
  - (b) The safeguard is that the leaseholder is only required to pay such costs as the Freeholder would pay if he were liable for such costs.
  - (c) There is an implied obligation to keep such costs down.
  - (d) If a freeholder chooses a London lawyer, where rates will be higher, but there is no obvious connection to London and the matter does not require expertise only to be found there then the Freeholder should expect to recover less than the solicitors have charged.
  - (e) A reasonable amount is not necessarily the amount a solicitor might charge but the amount a leaseholder might reasonably be required to pay.
  - (f) That the investigation into the tenant's right and agreeing the terms of the new lease is not complex.
  - (g) The hourly rate must be proportionate to the type of work being undertaken.
  - (h) If the Freeholder was liable to pay his own costs he might obtain estimates from 2 or 3 firms.
  - (i) In a situation where the checks and balances of the market are removed by statute and a freeholder wishes to employ a lawyer who charges more than the competition then in choosing a more expensive lawyer he should expect to pay the difference.
14. Mr Anderson attached to his submission a statement said to be from his client's lawyers RR Williams in which they say:
  - (a) In the main the time recorded on the matter seems reasonable. However the charge out rate for both firms is higher than it would be in Birmingham and this is the main reason for excessive costs.

- (b) The work is a standard job, which the firms will deal with regularly and the preparation work comprises changing the tenant's details in the Lease.
  - (c) In particular with regard to Gardiner Austin's costs: the charge out rate is high for a standard job, 24 minutes to prepare engrossment is excessive and the time spent on the 17<sup>th</sup> July letter to the tenant seems excessive.
  - (d) With regard to Wallace's costs: Why is a partner involved in a standard transaction at £375/£400 per hour? The total costs are disproportionate, it is unnecessary to involve 3 or 4 fee earners, time for obtaining copy entries is excessive and can be done by a secretary, and the time for a partner to consider a notice (42 minutes) is excessive (Gardiner Austin charged 12 minutes).
  - (e) Overall, Wallace's costs are high because of their charge out rate. If this work were carried out by a Birmingham firm (average rate £140 per hour) the overall fee would be £500 to £600 and Gardiner Austin would be slightly more because they have prepared the lease – say £600 to £700. All costs would be plus VAT.
15. At the hearing Mr Anderson said that he had no particular argument with the selection of the solicitors or the quantum of time subject to the specific points made. His concern was reasonableness and to be reasonable the charges must have a relationship to the prevailing market rates. The premium in this case was £14,000.00 and no reasonable freeholder and headleaseholder would expect to pay in excess of £3,500 plus VAT and disbursements for a transaction with a value of £14000. This is a case where the investigations are standard, the lease is standard and the title is registered. The day- to- day Leasehold Reform Act work is straightforward. Mr Anderson said he would expect to pay slightly more and does not consider 25% to be unreasonable. The Freeholder and Head leaseholder, when spending someone else's money not should be less careful and this is the protection the Act is giving.

**The 1<sup>st</sup> Respondent's case**

16. The First Respondents' costs total £1,948.08 including VAT and disbursements but excluding valuer's costs (£540.00) which are not in dispute.
17. The Freeholder is entitled under the Act to choose whomsoever it wishes to act even if they are outside the area in which the property is located. The hourly rate charged is below many central London charge out rates.
18. Specifically:
- (a) The 1<sup>st</sup> Respondent's solicitors have to liaise with the freeholder, the freeholder's valuer, the head tenant's solicitor and the tenant's solicitor with considerable time being incurred. Lease and the split between freeholder and headleaseholder. The engrossment had to be prepared in triplicate. The plan had to be edged and checked and the document given a final check once printed.
  - (b) The 17<sup>th</sup> July letter to the head tenant. The Engrossment in triplicate had to be sent to head tenant's solicitor on 17<sup>th</sup> May. All the relevant dates had to be checked.

## **The 2<sup>nd</sup> Respondent's case**

19. Ms Neale a solicitor with the Respondent's solicitors Wallace LLP had prepared a statement. The total of Wallace's fees is £1,573.20 including VAT and £40.00 in Land Registry fees.
20. The basis on which fees are charged is by reference to the time spent. Halliard's solicitor is a Partner and a Grade A (8 years post qualification experience) fee earner at £375.00 per hour. A Paralegal who assists is charged out at £150.00 per hour. Additionally a conveyancing partner is required who is also Grade A but charges £400.00 per hour.
21. The principles the Tribunal is asked to consider in connection with reasonableness of costs, charge out rates and the use of a partners are set out in *Daejan Investments v Parkside 78 limited LON/ENF/1005/03*, *Daejan Investments Limited v Steven Kenneth Twin LON?00BK/2007/0026* and *Andrew Allen v Daejan Properties SB/LON/00AH/OLR/2009/0343*.
22. The provisions of the Act are complex and accordingly, it is necessary for the relevantly experienced fee earner to deal with the following: consider the tenant's entitlement, communicate with the client, carry out and consider Land Registry searches, correspond with the tenant's solicitors, instruct and correspond with valuer, consider the valuation and take instructions, prepare and serve counter notice, prepare and agree the new form of Lease.
23. The costs incurred by Halliard in accordance with section 60(2) are the costs it would incur if it were personally liable.
24. In *Daejan v Parkside* (above) the Tribunal agreed that enfranchisement was a form of compulsory purchase and on this basis, provision was made in the Act for the recovery of reasonable professional costs incurred by a landlord. The test of what is reasonable did not turn on what the tenant might reasonably expect their liability to be and accordingly, the landlord was not required to find the cheapest but simply to give the instructions it would ordinarily give if they were bearing the costs themselves.
25. The 2<sup>nd</sup> Respondent identifies a number of cases where their charge out rates are said to fall within the 'reasonable expectation test'.
26. The 2<sup>nd</sup> Respondent submits that use of a partner falls within the 'reasonable expectation test'.
27. The concept of proportionality in respect of costs does not apply to section 60 of the Act. The costs payable are those which are reasonable
28. Office copy entries are required with plans of the Freehold, Headleasehold and Leasehold interests.
29. The nature of the legislation is complex and the involvement of a partner in assessing each individual Notice of Claim is reasonable. The time claimed as submitted on the timesheet is reasonable.

### **The Tribunal's deliberations**

30. The Tribunal considered all the relevant written and oral evidence presented and summarised above in its deliberations.
31. The Tribunal considered the proposition that these matters are *complex in nature and accordingly the involvement of a partner was required*. The Act has been in place since 1993 and many transactions have been completed without the use of a partner at Grade A level. The Tribunal accepts the principle that the Respondent may appoint whomsoever they please (and this may be a solicitor outside the region) but it does not, however, accept that this automatically entitles that person to charge at Grade A level for work which can, and often is carried out, by an assistant at Grade B (4 years post qualification experience) level.
32. The Tribunal considered 2 decisions recently made by this Tribunal involving properties on the same estate. (1) *L J Webb v Halliard Property Company Ltd (13Thames Court) BIR/00C9/2013/0006* which involved the Freeholder only and which was heard on 5<sup>th</sup> June 2013 with a determination of £682.00 plus VAT plus £80.00 disbursements and a courier fee of £20.81. (2) *AW Edwards v (1) Friends Provident and (2) Halliard Property Company Ltd (5 Isis Court)* which was heard on 27<sup>th</sup> March 2012 and with a determination of £629.20 plus VAT and £24.00 disbursements for the Freeholder and £435.00 plus VAT and £36.00 disbursements for the Headleaseholder. Wallace was instructed in both cases and Gardiner Austin was instructed in *5 Isis Court*.
33. The Tribunal is not, of course, bound by those decisions, however, neither of these determinations was appealed. The evidence presented to the Tribunal in this case is similar and in these circumstances the Tribunal consider it is unnecessary and disproportionate to consider the itemised schedules provided by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
34. The Tribunal did consider the principles in the cases submitted and finds they are not persuasive because they consider matters where the value of the transactions are significantly higher and this might justify the use of a partner as opposed to a qualified assistant.
35. In the light of those findings, and making an allowance for inflation in respect of the *Isis Court* decision the Tribunal determines the reasonable legal costs, in accordance with section 60 of the Act, as follows:  
  
Freeholder: £682.00 plus VAT and disbursements of £80.00  
  
Headleaseholder: £475.0 plus VAT and disbursements of £80.00
36. If the Respondents are registered for VAT purposes, it will be able to recover the VAT on those fees because those services will have been supplied to the Respondent, not the Applicants. In such circumstances VAT will not be payable by the Applicants.

37. If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (regulation 52

(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

**Robert T Brown**  
**Chairman**