4054

FIRST - TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00LC/OC9/2015/0016** **CHI/00LC/OC9/2015/0017** **CHI/00LC/OC9/2015/0018** **CHI/00LC/OC9/2015/0019** **CHI/00LC/OC9/2015/0020**
Properties	:	**5, 12, 18, 36 and 43 Edward Court, Capstone Road, Chatham, Kent, ME5 7TY**
Applicants	:	**Keith Robert Hobbs, John Luck and Pauline Luck, Graham William Sheppard and Julie Ann Sheppard, Paul Donald Clark and Alison Carol Clarke and Christopher Bain**
Representative	:	**SLC Solicitors**
Respondent	:	**Sinclair Garden Investments (Kensington) Ltd**
Representative	:	**W H Matthews & Co**
Type of Application	:	**Landlord's Costs - Lease Extension**
Tribunal Member	:	**Judge N Jutton**
Date of Decision	:	**11 September 2015**

DECISION

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1 **Introduction**

2 The Applicants are each the owners of leasehold residential flats at Edward Court, Capstone Road, Chatham, Kent, ME5 7TY.

3 Keith Robert Hobbs is the Lessee of 5 Edward Court (No.5), John Luck and Pauline Luck are the Lessees of 12 Edward Court (No.12), Graham William Sheppard and Julie Ann Sheppard are the Lessees of 18 Edward Court (No.18), Paul Donald Clarke and Alison Carol Clarke are the Lessees of 36 Edward Court (No.36) and Christopher Bain is the Lessee of 43 Edward Court (No.43).

4 The Respondent, Sinclair Gardens Investments (Kensington) Ltd is the Lessor of Edward Court.

5 Each of the Applicants sought an extension of the Lease under which they held their property. They each served on the Respondent a Notice pursuant to section 42 of the Leasehold Reform Housing & Urban Development Act 1993 (the 1993 Act). There are copies of those Notices with the papers before the Tribunal. The Notice for No.5 is dated 24 April 2014, for No.12 28 May 2014, for No.18 23 April 2014, for No.36 27 April 2014, and for No.43 21 October 2014. The Notices therefore for Nos. 5, 12, 18 and 36 were all served within a few weeks of each other whilst that for No.43, some months later.

6 Counter-Notices in respect of each flat were served under section 45 of the 1993 Act by the Respondent and in due course in each case, an agreement reached and a new extended Lease completed.

7 On completion the Respondent solicitors produced a completion statement which included the Respondent's professional fees. Those were:

a. In respect of each of Nos. 5, 12, 18 and 36: £840 inclusive of VAT for 'Notice of Claim', £540 inclusive of VAT for 'Conveyancing' and £300 inclusive of VAT for 'Valuation costs'.

b. In respect of No.43: £1350 inclusive of VAT for 'Notice of Claim', £720 inclusive of VAT for 'Conveyancing' and 'Valuation costs' inclusive of VAT of £ 840.

8 For each property, the amount of the legal fees are not agreed. Valuer's fees are agreed for Nos.5, 12, 18 and 36 but not for No.43.

9 The Applicants apply to the Tribunal under section 91(2)d of the 1993 Act for a determination of the reasonable costs payable by them pursuant to section 60(1) of the 1993 Act.

10 The Applicants in each case contend that the amount of reasonable costs payable by each of them under section 60 of the 1993 Act would be £500 plus VAT for legal fees and £300 inclusive of VAT for valuation fees.

11 Directions were made by the Tribunal on 29 June 2015. The Directions provided for all the applications to be heard together, for the Respondent to provide a response to the application and for the Applicants to reply.

12 Following receipt of a response to the applicants reply from the Respondent, the Tribunal made further Directions on 17 August 2015 allowing that further response and providing for a reply to be filed and served if they so wished by the Applicants.

13 The Directions of 29 June 2015 further provided that the applications were to be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing within 14 days of receipt of those Directions. None of the parties have objected and therefore the Tribunal has proceeded to determine the applications on the papers without a hearing.

14 **Documents**

15 The documents before the Tribunal were a bundle of documents of some 217 pages comprising in respect of each property, application forms, section 42 Notices, section 45 Counter-Notices, correspondence, completion statements, the Respondent's Statement of Case and the Applicants' Statement of Case. In addition to the bundle was the Respondent's form of response to the Applicants' submissions dated 11 August 2015, and the Applicants' reply thereto dated 1 September 2015.

16 **The Law**

17 Section 60 of the 1993 Act provides:

> *60 (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.*

18 Section 60(5) provides that a Tenant shall not be liable under this section for any costs which a party to any proceedings before the Tribunal incurs in connection with the proceedings, and section 60(6) provides that for the purpose of the section, the 'relevant person' in relation to a claim by a Tenant under the particular Chapter of the Act means the Landlord, in this case the Respondent.

19 **The Submissions**

20 The Tribunal has carefully considered all of the documents submitted to it by the parties. Given the order in which Statements of Case/Submissions were submitted (in accordance with Directions) it is convenient to summarise the Respondent's case first and the Applicants' second.

21 Those Submissions are summarised below and are set out as no more than a summary. If a particular Submission is not referred to in the summary, it does not mean that it has not been taken into account and considered by the Tribunal. References to page numbers are references to page numbers in the bundle of documents filed with the Tribunal.

22 **The Respondent's Case**

23 The Respondent distinguishes between the costs in relation to No.43 as *"a stand-alone Notice of Claim"* and those in relation to Nos. 5, 12, 18 and 36 as *"contemporaneous Notices of Claim"*.

24 It has set out a breakdown of the work carried out in respect of No.43 at pages 106 and 107. The work has been charged at an hourly rate of £250. It has been charged in 6 minute units. The work was carried out by a Mr Paul Chevalier, a very experienced Solicitor, admitted in 1974 who it is said had been instructed by the Respondent in connection with at least 5500 enfranchisements/Lease extensions. The total time engaged in relation to the Notice of claim is put at 36 units (3.6 hours) plus 4 letters to the Respondent seeking instructions/updating as to progress, 2 letters to the Respondent's valuer and 3 letters to the Applicants' solicitors; a further 9 units altogether. The total figure is £1125 plus VAT of £225, a total of £1350.

25 As to the conveyancing aspect, or as the Respondent puts it, time spent in granting the Lease, a further 20 units of 6 minutes are claimed plus 4 letters written, a total of 24 units equating to £600 plus VAT of £120, a total of £720. In addition are claimed valuer's fees of £840 inclusive of VAT (£700 net of VAT) but no breakdown of those fees are given.

26 For Nos.5, 12, 18 and 36 (the *"contemporaneous Notice of Claim"*), the sum claimed is £840 inclusive of VAT for *"Notice of Claim"* and £540 inclusive of VAT for *"conveyancing"* (the valuer's fee of £300 inclusive of VAT being agreed). These costs are more particularly analysed at Appendix H to the Respondent's Statement of Case (page 132).

27 Appendix H states that the aggregate time spent on Nos. 5, 12, 18 and 36 have been divided equally between each property so in each case the costs payable are identical. The Respondent says that each application before the Tribunal must be decided on its own facts. That each application for a Lease extension is not simply a repeat process; that each Notice of claim is not identical.

28 The Respondent says at paragraph 8.1 of its Statement of Case (page 134) that the costs in respect of Nos. 5, 12, 18 and 36 are *"... based on the average of £1600 for a stand-alone Notice of Claim having deducted some letters out and £1000 for each subsequent Notice of Claim which equates to £1150 per Notice of Claim".*

29 The Respondent sets out at paragraph 8.2 of its Statement of Case (pages 134, 135 and 136) details of work carried out over a period of 4 hours in 6 minute units for *"Notice of Claim"* and *"Grant of Lease"* totalling for each 20 units. A total at the rate of £250 per hour of £1000.

30 The Respondent makes reference to what has been described as the 'reasonable expectation test' in section 60(2) of the 1993 Act. It says that the band of costs recoverable under that test has a ceiling of costs which would have been paid had the Landlord/Respondent been paying them itself. Those costs it says are not restricted to those costs which the Tribunal or the Applicant considers reasonable. The Tribunal, it says, can only disallow costs which the Respondent would not have instructed to be incurred or costs which are in excess of those which it would pay if paying them personally. The Respondent refers to a letter at Appendix E of its Statement of Case (pages 138 and 139). This is a letter from the Respondent to its Solicitors dated 15 July 2015. It states as follows:

"We accept that we are liable to pay legal costs of at least £1350 including VAT on an indemnity basis in pursuance of the Notice of Claim in respect of 43 Edward Court ..."

"We accept that we are liable to pay legal costs of at least £720 including VAT on an indemnity basis in pursuance of the Notice of Claim in respect of 43 Edward Court which are of and incidental to the grant of the new lease in so far as they are not recoverable from the Tenant".

"We accept that we are liable to pay legal costs of at least £840 including VAT on an indemnity basis in pursuance of the Notice of Claim in respect of 5, 12, 18 and 36 Edward Court ...".

"We accept that we are liable to pay legal costs of at least £540 including VAT on an indemnity basis in pursuance of the Notice of Claim in respect

of 5, 12, 18 and 36 Edward Court which are of and incidental to the grant of the new lease so far as they are not recoverable from the Tenant"

"We confirm it was agreed that as from 19th July 2013 we would pay for the legal services of W H Matthews & Co in respect of enfranchisements, lease extensions and the associated Conveyancing at the rate of £250 per hour in so far as they are not recoverable from the Nominee Purchaser/Tenant".

31 In short, the Respondent says that the only test in section 60 as to the reasonableness of its costs is whether *"the Landlord would have paid our costs if it were paying them personally"* (page 111 and 124).

32 Further, the Respondent says that the burden of proof rests with the Applicants to establish with evidence that the Respondent would not have paid the costs claimed by its solicitors if the Respondent had been personally liable for the same. That the subjective opinion of the paying party, the Applicants, as to why costs were not reasonable is insufficient. That it is for the Tribunal to analyse the evidence before it and to determine objectively giving the benefit of any doubt to the Landlord as to whether the Landlord would reasonably have paid the costs itself. The best evidence of that, says the Respondent, is the letter referred to at Appendix E of the Landlord's Statement of Case dated 15 July 2015 (pages 138 and 139). That the burden therefore rests with the Applicants to produce evidence which the Respondent says the Applicants have failed to do.

33 The Respondent makes reference to a schedule breaking down each element of the costs claimed produced by the Applicants (pages 192-208). That schedule, says the Respondent, is largely irrelevant as it amounts to no more than the Applicants' solicitors' personal opinion as to why the costs are said to be unreasonable and does not address what the Respondent would pay if paying the costs itself.

34 The reason why the costs are higher for No.43 is because that was not, the Respondent says, a contemporaneous lease extension. A different fee earner was involved. That the Notice of Claim was served some 4 months later than the Claims for the other flats. That the costs for Nos.5, 12, 18 and 36 are averaged and the Respondent would pay £1150 plus VAT for each if paying those costs personally. That the Respondent is not concerned as to the breakdown of the costs in respect of each Notice of Claim provided that the total average reflects the instructions given by the Respondent. That the Respondent is not concerned if time spent on any particular property is marginally different to another.

35 In summary, the Respondent says that the Applicants have not made any submissions as to why this Respondent would not have paid the costs if it were paying them itself, or produced any evidence to show otherwise. That the burden of proof rests with the Applicants to establish that the Respondent would not have paid the costs claimed if it were personally liable. Indeed, that the best evidence before the Tribunal is that the Respondent would have employed the Respondent's solicitors on the same

terms and paid those costs if it were personally liable. That any doubt as to the reasonableness of the costs claimed should be exercised in favour of the Respondent (applying the indemnity principle).

36 **The Applicants' Case**

37 The Applicants accept the charge out rate claimed by the Respondent's solicitors. They do not accept that the fees claimed for No.43 should be higher than Nos.5, 12, 18 and 36 simply because the work was carried out by a different fee earner and some months later. That the Respondent they say would expect the same fee earner, familiar with the property, to have dealt with No.43.

38 The Applicants say that No.43 was not a 'stand-alone' application. The Notice of Claim for No.43 was only served 4 months after the Notice of Claim for No.12. (That notwithstanding the dates on the notices that for No.12 was served on 10th June 2014 and those for Nos. 5, 18 and 36 on 27th May 2014). That the costs breakdown provided for Nos.5, 12, 18 and 36 are in a standard pro forma and are not realistic of the actual time spent on each task.

39 The Applicants set out a form of 'Scott Schedule' in which they have addressed each component of the Respondent's costs. There is one Scott Schedule for No.43 (pages 193-200) and one for Nos.5, 36, 18 and 12 (pages 202-208). The Tribunal has considered each item in the two Scott Schedules in its Decision below.

40 The Applicants say that the costs payable under section 60 of the 1993 Act fall under a two-stage test. Firstly, the costs must be reasonable and incidental to the three categories set out in section 60(1). The Applicants say the intention is not that the Respondent Landlord should recover all of its costs incidental to the Notice of Claim, but only those costs that are necessarily incurred under those heads. Secondly, it can only recover those costs that are reasonable applying the test under section 60(2) (ie *"... 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"*). That test, say the Applicants, is an objective test and not a subjective test. That it is irrelevant as to what this specific Respondent Landlord would agree to pay.

41 Further, the Applicants say that the costs recoverable under section 60(1)(a) relating to any investigation reasonably undertaken of the Applicants' right to a new lease are limited. That it is not sufficiently wide to cover preparing and issuing Notices and the costs of attending a client. Otherwise any work whatsoever carried out by the Respondent could be regarded as *"incidental"* to the investigation of the Tenants' right to a new lease and that, say the Applicants, goes beyond the intention of the 1993 Act. That the investigation of a Tenant's right to a new lease involves simply checking that a Tenant is eligible to extend their lease. That would include checking the Tenant's title and their lease. Further, that any modifications that the Respondent would wish to make to the lease

pursuant to section 57 of the 1993 Act would have been established with previous lease extensions at Edward Court. That because all the leases at Edward Court, says the Applicants, are in the same form. In essence the Applicants say that what has been undertaken is no more than a repeat process. That the Respondent's solicitors are experienced and should thus be able to carry out the work relatively quickly. The process, the Applicants say, is not difficult. The lease in respect of each property is in the same form. That in essence, there was a large amount of duplication. The Applicants make the point that for each lease extension, the Respondent produces the same breakdown of costs which, they say, is inconsistent with the Respondent's allegation that a careful investigation is carried out each time a section 42 Notice is served.

42 In conclusion, the Applicants say, that not all of the costs claimed by the Respondent fall within the specific categories as set out in section 60(1). That if the Respondent was responsible for its own costs, it would be reasonable for it to seek a reduction given the number of transactions being carried out. That the costs claimed are not reasonable pursuant to section 60(2).

43 **The Tribunal's Decision**

44 Section 60 of the 1993 Act seeks to do two things. Firstly, given that the Act confers a right on Tenants of leasehold flats to compel their Landlord to grant them a new lease, it provides as matter of basic fairness that the Tenant in exercising such rights should reimburse the costs that the Landlord necessarily incurs as a consequence.

45 Secondly, to provide some protection for Tenants against being required to pay more than is reasonable. The section does not allow an opportunity for the Landlord's advisers to charge excessive fees simply in expectation that they might be recovered from the Tenant.

46 As it was put by the Upper Tribunal in **Metropolitan Property Realisations Ltd v John Keith Moss** (2013) UK UT 0415 (LC) at paragraph 11:

"Section 60 therefore provides protection for both landlords and tenants: the 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".

47 The Tribunal does not accept that the test of what is reasonable under section 60(2) can be satisfied merely by producing a letter from the Landlord/Respondent saying that it accepts liability to pay such costs. In the knowledge that it is not paying such costs, a Landlord might well feel very comfortable in signing such a letter. Indeed, if the Tribunal were to accept such a letter at face value and leave matters there, there would be little, if any, protection left for the Tenants.

48 The Tribunal gives little weight for those reasons to the letter from the Respondent to its Solicitors dated 15 July 2015 (pages 138 and 139).

49 As to the question of the burden of proof, the Tribunal does not accept that it goes so far as to require the Applicants to establish that this particular Respondent would not pay the costs claimed if it had been personally liable for them. That would be to fix the Applicants with an almost impossible burden. The Tribunal is an expert Tribunal experienced in assessing such costs.

50 **The Scott Schedule for No.43 (pages193-200).**

51 The item numbers set out below are the item numbers that are contained in the first column of the Scott Schedule:

52 **Item 1**
Personal attendances on client, obtaining instructions and advising, 36 minutes

53 The Applicants say that 36 minutes is too much. That the Respondent's Solicitors have already dealt with at least 5 other Lease extensions in the same development and a simple phone call or letter from the Respondent would be sufficient. The Applicants do not say what they believe would be a reasonable time save to say that incoming correspondence would not be chargeable.

54 The Tribunal notes that the time claimed is over three different dates; one in October and two in December 2014. There is no detail given as to what attendances or instructions were specifically obtained on each occasion. The attendance on 27 October 2014 is the same date as the time spent in considering the Applicant's Lease and Official Copy Entries (item 2), in instructing a valuer (item 3), and for Preliminary Notices (item4). The entry dated 18 December 2014 is one of the same dates when time is spent considering the Applicant's lease (item2),investigating tenants right to a new lease (item5), considering the validity of the Notice of Claim (item 6) and considering valuation (item 8). On each occasion, it seems to the Tribunal that it was reasonable for the Respondent's Solicitors to seek instructions. However, there would appear to be an element of duplication. On 18 December 2014 (item 8) time is claimed inter alia for discussing the valuation with the client (2 units). The Tribunal disallows 2 units, £50.

55 **Item 2**
Considering the Lease and Office Copy Entries, 18 minutes

56 The Applicants say that at this stage (there are two dates, 27 October 2014 and 18 December 2014) the Applicants' solicitors have not provided Office Copy Entries, that the consideration of the Applicant's right to a new lease is duplicated at item no.6.

57 The Respondents' Solicitors have to consider the terms of the Applicant's lease as part of their job in establishing whether or not the Applicant qualifies to apply for a lease extension. They might also consider Office Copy Entries of the Applicant's title to establish that the Applicant is the registered proprietor, and has been for a sufficient time. The time claimed of 18 minutes is on the high side but not unreasonable.

58 **Item 3**
Instructing valuer, 18 minutes

59 The Applicants dispute this in its entirety. This would have taken, say the Applicants, a phone call or email stating the amount of premium proposed in the section 42 Notice and asking the valuer to proceed with his or her valuation, bearing in mind no doubt the valuer had already carried out a number of lease valuations at the same development.

60 In the view of the Tribunal, this is work that the Respondent's Solicitors would reasonably carry out incidental to obtaining a valuation of the Applicant's flat. The valuer would no doubt need to be sent the section 42 Notice, a copy of the lease and instructions on the part of the Respondents. Although on the high side, the Tribunal does not regard time spent of 18 minutes as unreasonable.

61 **Item 4**
Preliminary notices as to inspection, title and deposit, 18 minutes

62 The Applicants say that the preparation of preliminary notices does not fall within the provisions of section 60(1). The Notices issued are in a standard form and for each transaction. The only adjustment is the Tenant's name and flat number.

63 The nature of the 'preliminary notice' is not explained but the Tribunal assumes that it is a request for payment of 10% deposit of the premium proposed by the Applicants pursuant to section 2 of Schedule 2 of the Leasehold Reform (Collective Enfranchisement etc) Regulations 1993. In the view of the Tribunal, given this is a statutory right, it is reasonable work carried out by the Respondent incidental to the grant of a new lease. However, it accepts the Applicants' contention that Notice would be in a standard form and the only details to be completed would relate to the property address, the amount of premium, deposit etc. As such, it considers that 12 minutes would be reasonable and makes a reduction of 1 unit of £25.

64 **Item 5**
Researching questions which need to be confirmed in connection with investigating the Tenant's right to a new Lease, 48 minutes

65 The Applicants dispute this item in its entirety. The Respondents' Solicitors, the Applicants say are experienced in lease extensions and familiar with extensions for this development. This is not, the Applicants say, an unusually complex matter. This item appears to be addressed in more detail at Appendix A to the Respondents' Statement of Case, in paragraph 5 onwards (page 115). The time claimed is 48 minutes carried out on two occasions, 18 December 2014 and 22 December 2014. There does appear to be an element of duplication at item 6 where work is carried out on the same dates and which includes considering the validity of the Tenant's Notice. The total time claimed for both items is 1 hour 12 minutes which in the view of the Tribunal is not reasonable. The Tribunal makes a deduction of 12 minutes, £50.

66 **Item 6**
Considering validity of Tenant's Notice and validity of service on third party, 24 minutes

67 The Applicants say that 2 units would be sufficient, this being a relatively straightforward task. The Tribunal allows this item, having already made a deduction at item 5.

68 **Item 7**
Drafting Counter-Notice, 18 minutes

69 The Applicants say that preparation and service of the Counter-Notice does not fall within the provisions of section 60(1) and make reference to Hague on Leasehold Enfranchisement 6th edition paragraph 6.43(c) and to a Decision of the First-Tier Tribunal involving the Respondent reference 26UD/OC9/2014/0010. Further the Applicants say that the amount of time is disputed. That given the Respondent's Solicitors' experience, this is in effect a pro forma form which would take less than 6 minutes to complete.

70 The Respondent refers to the Decision of the Upper Tribunal in **Jeremy Ryton Plunkett-Ernle-Erle-Drax v Lawn Court Freehold Ltd** (2010) UKUT 81 (LC) in which the Tribunal stated at paragraph 28: *"For the avoidance of doubt I have allowed costs associated with the preparation and service of a Counter-Notice. In my opinion this is a cost that was incurred 'in pursuance of the Notice'. The word 'pursuance' in this context seems to me to have a causative meaning, ie as a result of, or caused by, the Notice. It is also a cost that is either directly or incidentally concerned with the matters contained in section 33(1) of the 1993 Act".*

71 The reference to the extract in Hague is to costs in relation to the service of a Notice in reply pursuant to the provisions of the Leasehold Reform Act 1967. The Decision of the First-Tier Tribunal referred to by the Applicants

is not binding upon this Tribunal. Although the Decision in Drax relates to costs payable under section 33(1) of the 1993 Act, the wording is very similar to that in section 60. Both refer to costs being incurred *"in pursuance"* of a Notice. The Tribunal considers that the cost of drafting a Counter-Notice is work carried out as a consequence of or 'in pursuance of' the Notice of Claim and that as such this item is recoverable and that 18 minutes for drafting a Counter-Notice (a copy of which is in the papers (pages 98-99)) is reasonable.

72 **Item 8**
Considering valuation and discussing same with client and valuer, 30 minutes

73 The Applicant disputes this item. The Applicant says that section 60(1)(b) does not provide for the Solicitors to be involved in the valuation. Reference is again made to the decision of the First-Tier Tribunal referred to at paragraph 69 above. The Respondent says (Appendix A of the Statement of Case) that the valuation report has to be considered carefully, checked for factual errors and consideration given to whether there may be recent Decisions of the Upper-Tribunal/Court of Appeal of which the valuer is not aware and which need to be taken into account. That instructions then have to be taken from the client.

74 The Tribunal accepts that it is reasonable for the Respondent's Solicitors to read and consider the valuation produced by the valuer and to take instructions from the client. In the view of the Tribunal, this is work which is incidental to obtaining a valuation under section 60(1)(b). However, in the view of the Tribunal, 30 minutes is not reasonable and reduces this item by 2 units, a reduction of £50.

75 **Item 9**
4 letters out to client, 2 to valuer, 3 to Applicants' Solicitors, 9 units, 54 minutes

76 The Applicants say that there are no details provided but assumes that the correspondence relates to the negotiation stage of the process which is not recoverable under section 60 and reference is again made to Hague.

77 The Tribunal agrees that costs in relation to the negotiation are not recoverable. However, there is no evidence that these are costs in relation to negotiation. The Applicants' Solicitors make an assumption. Indeed the Applicants' Solicitors will know what letters it has received from the Respondent's Solicitors and thus can analyse whether or not it has received 3 letters which are written in relation to, pursuant to or incidental to costs incurred under section 60. They have not, it would appear, carried out that analysis (or if they have are satisfied that the letters do not relate to negotiations). There is no evidence before the Tribunal to suggest that this work was not carried out or that it was not work which is covered by section 60 or that it was unreasonable.

78 **Item 10**
Attendances on client, 12 minutes

79 This appears to be a reference to time spent in connection with the grant of the lease (Respondents' Statement of Case, page 107). The Applicants dispute the entire amount. There are, the Applicants say, no details provided and further this item should be apportioned between the 6 flats (i.e. including No.26).

80 There are no details given. However, it is not unreasonable in the view of the Tribunal for the Respondent to have spent 12 minutes in respect of each matter, attending its client whether by letter or telephone or in person in relation to the granting of the lease.

81 **Item 11**
Considering terms of lease for inclusion in Counter-Notice and attendances and correspondence with client, 12 minutes

82 The Applicants say that the terms of the lease had already been considered. That the leases for the development are in a standard form. It is not clear what the correspondence refers to and that 2 units should be sufficient to check the leases in the same form.

83 The Tribunal notes that only 2 units are claimed. In the view of the Tribunal, this is a reasonable item.

84 **Item 12**
Drafting new Lease, incorporating terms and Counter-Notice, 18 minutes

85 Not disputed.

86 **Item 13**
Considering revisions thereto, 12 minutes

87 The Applicants say that the amendments were minor and that 2 units would have been sufficient.

88 Only 2 units are claimed. The item is reasonable.

89 **Item 14**
Agreeing final form of Lease, 12 minutes

90 The Applicants say this conflicts with no.13 above. That the amendments had been accepted and it is not clear what further time was needed.

91 The Tribunal agrees. If the Respondent has considered and therefore presumably accepted amendments to the lease at item 13, it is not clear what further work was required, in particular what further work in

'agreeing' the form of the Lease. This item is not allowed. A deduction of £50.

92 **Item 15**
Preparation, 2 engrossments, 6 minutes

93 The Applicants say this is not fee earning work. The Tribunal agrees. It is simply a matter of a member of the Respondent Solicitors' staff printing the agreed form of lease out. This item is not allowed. A reduction of £25.

94 **Item 16**
Preparing completion statement, 18 minutes

95 The Applicants suggest 2 units. In the view of the Tribunal, this is an important aspect of the conveyancing process, and 18 minutes is reasonable.

96 **Item 17**
Attending to completion, 30 minutes

97 The Applicants say that this falls outside of section 60(1)(a) or (b). The work could be carried out by a junior fee earner.

98 The work is covered by section 60(1)(c). Although on the high side, in the view of the Tribunal this is not unreasonable.

99 **Item 18**
4 letters out, 24 minutes

100 The Applicants dispute this and say there are no details as to what the letters relate.

101 There is no evidence that this item is unreasonable. Although it is not clear as to what the letters relate, there is no evidence that 4 letters were not written as part of the conveyancing process.

102 **Item 19**
Total time spent, 6.9 hours

103 The Applicants say that based upon previous Decisions of the Tribunal, a standard lease extension should not take more than 4 hours. That the amount of time claimed is therefore excessive. That in this case the time should be less than 4 hours given the number of extensions already carried out on this development.

104 The Tribunal has considered the costs claimed by the Respondent in the whole having taken into account the deductions set out above. It does not in all the circumstances consider that the costs claimed, subject to those deductions, to be unreasonable.

105 Taking into account the deductions set out above, the Tribunal determines that the reasonable costs payable pursuant to section 60 of the 1993 Act by the Lessee of No.43 Christopher Bain are:

a. Notice of Claim £1140 inclusive of VAT;
b. Grant of Lease/Conveyancing £630 inclusive of VAT;

106 **Valuation Costs**

107 The Respondent claims valuation costs inclusive of VAT of £840 (£700 plus VAT). The Respondent says that in line with the valuation fees for Nos.5, 12, 18 and 36, £300 inclusive of VAT (£250 plus VAT) would be reasonable.

108 There is no explanation from the Respondent as to why the valuation costs for No.43 are substantially higher than those for Nos.5, 12, 18 and 36 save that the valuation presumably was carried out several months later as a 'stand-alone' valuation.

109 If the Respondent were paying these fees itself, it would be reasonable to expect the same valuer to be instructed. A valuer who had previously produced valuations for Nos.5, 12, 18 and 36 who would be familiar with the development and the terms of the lease. That as such, the Respondent might reasonably expect to pay fees which were in line with those previously paid for the valuations of Nos.5, 12, 18 and 36 notwithstanding the gap between those earlier valuations and the valuation for No.43 some 4-5 months later. In the circumstances, bearing in mind the test set out at section 60(2) of the 1993 Act, the Tribunal determines that the sum of £300 inclusive of VAT to be reasonable.

110 **The Scott Schedule for Nos.5, 36, 18 and 12 (pages 202-208)**

111 The item numbers set out below are the item numbers that are contained in the first column of the Scott Schedule:

112 **Item 1**
Obtaining instructions and advising throughout the entire Lease extension process, 12 minutes

113 The Applicants say that this is a claim for 2 units for each lease, a total for all four properties of 8 units for taking instructions and advising throughout the process. The Applicants say that the Respondent has previously completed a lease extension for Flat 26 of the development and thus it would not be necessary to spend a further 48 minutes taking instructions, on the assumption that there was a long-standing instruction from the Respondent.

114 The Tribunal does not consider that a total of 12 minutes for each property for the Respondent's Solicitors to seek instructions from the Respondent to cover the entire lease extension process is unreasonable.

115 **Item 2**
Considering the Lease and Office Copy Entries. Initial consideration. 12 minutes

116 Again, the Applicants say that this matter has already been addressed in relation to the lease extension for Flat 26. Office Copies had not been supplied by this date and further, there was duplication of the work at item 4.

117 The Tribunal does not regard the time spent as unreasonable. 12 minutes in each case to consider the lease, Office Copy Entries and initial consideration is not unreasonable. The fact that similar work had previously been carried out in relation to No.26 does not avoid the need for the Respondents' Solicitors to carry out the work again for each subsequent lease extension.

118 **Item 3**
Preliminary Notices, drafting and checking, 12 minutes

119 The Applicants say that this does not fall within section 60(1). That in any event, the Notices are in a standard form and are the same in each transaction. The only adjustments that would need to be made are to the Tenant's name and flat number.

120 The time claimed by the Respondent for the corresponding item for No.43 (paragraph 61 above) was 18 minutes. The Tribunal considers 12 minutes to be reasonable.

121 **Item 4**
Considering validity of Tenant's Notice, 18 minutes

122 The Applicants say that this is a straightforward task and only involves having to check that the Applicant has been the registered proprietor for at least 2 years and that the lease is not a 'long lease'. That there are no unusual features regarding the property which would justify spending such a long time investigating the validity of the Notices. That 2 units would suffice.

123 The Respondents' Solicitors have already considered the lease. If as is suggested at item 2 the Respondents' Solicitors have also checked the Office Copy Entries, then they have already checked that the Applicant qualifies. Checking that the Tenant's Notice has been properly filled out so as to comply with the provisions of section 42 of the 1993 Act would not reasonably, in the view of the Tribunal, take 18 minutes. 12 minutes would be sufficient. A deduction of 1 unit of £25 is made.

124 **Item 5**
Investigation. Researching questions which need to be confirmed in connection with investigating Tenant's right to a new Lease. 24 minutes

125 The Applicants dispute this in its entirety. They say that the Fee Earner involved, Mr Richard Lawrence, has acted in over 270 Lease extensions. That such an experienced solicitor with an in-depth knowledge would not need to carry out any research.

126 The Respondent's Solicitors had already checked the validity of the Tenant's Notice (item 4). However this is work which would appear to be the same as or similar to that at item 5 for No.43 and which is addressed at page 115. Although the time claimed is on the high side, it is not in the view of the Tribunal unreasonable.

127 **Item 6**
Counter-Notice drafting, 12 minutes

128 The Applicants repeat what is said in relation to No.43 at item 7 (paragraph 69) above.

129 For the reasons set out at paragraph 71 above, the Tribunal considers this item is recoverable and that 12 minutes for drafting a Counter-Notice is reasonable.

130 **Item 7**
Valuation. Considering valuation and discussing same with client and valuer, 12 minutes

131 The Applicants say that the time spent by the Solicitors in carrying out such work is not recoverable under section 60(1)(b).

132 As with No.43 (paragraph 74 above) the Tribunal accepts that it is reasonable for the Respondent's Solicitors to read and consider the valuation produced by the valuer and to take instructions from the client. That the work is incidental to obtaining a valuation under section 60(1)(b). That 12 minutes claimed is reasonable.

133 **Item 8**
Separate letters, 18 minutes

134 The Applicants assume that this relates to negotiation which is not recoverable under section 60. (The Scott Schedule states 12 minutes but the schedule at Appendix H of the Respondents statement of case says 18 minutes).

135 For the reasons set out in respect of No.43 above (paragraph 77) the Tribunal determines that this item is reasonable.

136 **Item 9**
Draft Lease from first new lease template. Consider individual Notice of Claim, existing Lease and drafting new Lease, 12 minutes

137 This is not disputed.

138 **Item 10**
Consider amendments appropriate to each Lease extension and amend accordingly, 12 minutes

139 This is not disputed.

140 **Item 11**
Ensure each engrossment is in agreed form and send one part to Tenant's Solicitor and one part to the Landlord, 12 minutes

141 The Applicants say that the preparation of engrossments is not fee earning work.

142 The Tribunal agrees that this is not fee earning work. However, presumably a letter was written to accompany the sending of an engrossed lease to Tenant's Solicitor and to the Landlord which would have been charged each in 6 minute units. As such, the Tribunal regards this item as reasonable.

143 **Item 12**
Preparation of completion statement to include apportionments for each Lease, section 60 costs and valuer's costs, 18 minutes

144 The Applicants say that this is work which could be carried out by a junior fee earner and should take no more than 2 units.

145 In the view of the Tribunal, this is an important aspect of the conveyancing process and 18 minutes is reasonable.

146 **Item 13**
Attend to completion etc, 30 minutes

147 The Applicants say that a senior experienced solicitor should not be checking that the completion monies received match the completion statement, nor the validity of the execution of the engrossment, or that the engrossment is in the same form as the draft.

148 In some firms of solicitors, checking that completion monies received match the completion statement may well be carried out by non-fee earning staff. It is not unreasonable in other firms for the work to be carried out by the fee earner with the conduct of the matter. Although on

the high side, in the view of the Tribunal the time claimed is not unreasonable.

149 **Item 14**
Account to client. Pay valuer, prepare bill of costs and send new Lease to client, 12 minutes

150 The Applicants say that this work does not fall within section 60 and is not fee earning work.

151 In the view of the Tribunal, accounting to the client is work which is incidental to the grant of a new lease, as is sending the new lease to the client. It is fee earning work. Accounting to the client falls within the work carried out on completion at item 13. However, the Respondents' Solicitors will presumably send a letter to the Respondent enclosing the new lease and form of account. The time claimed of 12 minutes is reasonable.

152 **Item 15**
Separate correspondence, 24 minutes

152 The Applicants say that no details have been provided as to what this correspondence relates.

153 There is no evidence that this item is unreasonable. Although it is not clear as to what the letters relate, there is no evidence that 4 letters were not written as part of the conveyancing process. The item is allowed.

154 **Item 16**
Total time spent. Claim £1150 plus VAT but only 40 units (4 hours) accounted for

155 The Applicants say that previous Decisions of the First-Tier Tribunal determine that no more than 4 hours to deal with the work required is necessary. That in this case, given the number of similar Lease extensions in the same development, the time claimed should be less than 4 hours.

156 The total amount claimed by the Respondent is £1150 plus VAT. The breakdown of costs set out by the Respondent at Appendix H to its Statement of Case (pages 134-136) shows total time spent of 4 hours. That is the breakdown of time spent provided by the Respondent and in respect of which the Applicant has prepared its Scott Schedule.

157 The Tribunal is not bound by previous Decisions of the same Tribunal. The Respondent says that its costs are based on an average of £1600 for a stand-alone Notice of Claim and £1000 for each subsequent Notice of Claim which is then averaged out between the Applicants to produce £1150 per Notice of Claim. The breakdown of costs set out by the Respondent at Appendix H to its Statement of Case appears to relate to each subsequent Notice of Claim, that is a total of 4 hours at £250 per hour, £1000 plus VAT. Unhelpfully, the Respondent has not provided a breakdown of the

figure of £1600 for a stand-alone Notice of Claim. The best the Tribunal can do is to take the figure for No.43, as a stand-alone Notice of Claim, and to apply that together with the figure set out for each subsequent Notice of Claim at Appendix H of the Respondent's Statement of Case as adjusted above, and to apply an average figure.

158 The figure for No.43 is £1475 net of VAT. The figure allowed for the Scott Schedule in relation to Nos.5, 12, 18 and 36 is £975 net of VAT which together applied as an average figure equates to £1100 net of VAT per property, a total of £1320 inclusive of VAT for each of Nos.5, 12, 18 and 36.

159 The Tribunal has considered the figure of £1100 (net of VAT) and applying the test of reasonableness set out in section 60(2) of the 1993 Act considers that sum to be reasonable. Accordingly, the Tribunal determines that the reasonable costs payable pursuant to section 60 of the 1993 Act by each of the Lessees of No.5 Keith Robert Hobbs, No.12 John Luck and Pauline Luck, No.18 Graham William Sheppard and Julie Ann Sheppard, and No.36 Paul Donald Clarke and Alison Carol Clarke are:

Legal costs for Notice of Claim and grant of Lease/conveyancing: £1320 inclusive of VAT.

160 **Summary of Tribunal's Decision**

161 The Tribunal determines that the reasonable costs payable by the Applicants pursuant to section 60 of the 1993 Act are:

162 **No.43 Edward Court**

163 a) Legal costs for Notice of Claim and grant of Lease/conveyancing: £1770 inclusive of VAT
b) Valuation costs: £300 inclusive of VAT

Total £2070

164 **Nos.5, 12, 18 and 36 Edward Court**

165 For each:
a) Legal costs for Notice of Claim and grant of Lease/conveyancing: £1320 inclusive of VAT
c) Valuation costs: £300 inclusive of VAT

Total £1620

Dated this 11th day of September 2015

Judge N Jutton

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.