UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2015] UKUT 0122 (LC)
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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LEASEHOLD ENFRANCHISEMENT – COSTS – in-house solicitor engaged in responding to seven near identical claims – whether hourly rate for solicitor in private practice applicable – appropriate rate – whether fee recoverable for solicitor to instruct valuer and consider valuation – s.60 Leasehold Reform, Housing and Urban Development Act 1993 – appeal allowed

IN THE MATTER OF AN APPEAL AGAINST A DECISION
OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

SIDEWALK PROPERTIES LIMITED

Appellant

and

CHRISTOPHER MARK TWINN
and others

Respondents

Re: Flats 3, 7, 11, 33, 34, 40 and 49 Trinity Mews,
Bury St Edmunds
Suffolk

Martin Rodger QC,
Deputy President

Decision on written representations

The following cases are referred to in this decision:

Columbia House Properties (No.3) Ltd v Imperial Hall Freehold Ltd [2015] UKUT 45 (LC)

Cole v British Telecom Plc [2000] 2 Costs Law Reports 310

Re: Arora [2013] UKUT 0362 (LC)

Re: Bradmoss Limited [2012] UKUT 3 (LC)

Re: Eastwood (deceased) [1975] Ch 112

Re: OM Property Management Ltd [2012] UKUT 102 (LC)

Introduction

1. This appeal is against a decision of the First-tier Tribunal (Property Chamber) ("the F-tT") delivered on 30 July 2015 by which it determined that the appellant, Sidewalk Properties Limited, was entitled under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 to receive a total sum of £1,105 from the respondent leaseholders as the reasonable costs incurred by it in connection with the grant to them of new leases of flats at Trinity Mews, Bury St Edmunds. The appellant had claimed a combined total of £6,615 for the same work, all of which had been carried out by a solicitor employed by a company within the same group of companies as the appellant itself.

2. In its decision the F-tT sought to distinguish the leading authority on the proper approach to the assessment of costs incurred by in-house solicitors, the decision of the Court of Appeal in *Re: Eastwood (deceased)* [1975] Ch 112, in deciding that the charges recoverable by the appellant should not be based on the charging rates of solicitors in private practice but on the Tribunal's own assessment of an appropriate in-house rate.

3. The F-tT gave permission to appeal on two points: first, the point of principle whether it should have followed the decision of the Court of Appeal in *Re: Eastwood*; and, secondly, and in any event, whether the charging rate it had allowed the appellant's solicitor was appropriate. It refused to grant permission to appeal on a third issue, concerning the recoverability of costs incurred by the appellant in making use of its solicitor to instruct its chosen valuer and to consider his subsequent reports. The appellant renewed its application for permission to appeal on that issue, which I now grant as I am satisfied that the appellant has an arguable case.

4. At the request of both parties the appeal has been determined by the Tribunal on the basis of written representations prepared by counsel: Mr Justin Bates for the appellant and Mr Graham Sinclair for the respondents.

Court of Appeal guidance on the assessment of "in-house" costs

5. In *Eastwood* the Court of Appeal considered the entitlement of the Attorney-General to costs in successful litigation conducted on his behalf by a senior solicitor in the Treasury Solicitor's office. The Court rejected the suggestion that there was an onus on the party employing its own in-house legal department to demonstrate that the expenses of that department, analysed and broken down and apportioned, would throw up a figure which would not be less than the reasonable costs which would have been allowed to an independent solicitor. The Court viewed "with horror the immensity of the complication which would be introduced into an already complicated system of taxation" if in-house expenses were required to be justified in that manner; it was preferable that there be a presumption that in-house costs should be determined on the same basis as those of an independent practitioner. At p. 132C-F the Court of Appeal summarised its conclusions:

> "(1) It is the proper method of taxation of a bill in a case of this sort to deal with it as though it were the bill of an independent solicitor, assessing accordingly a reasonable and fair amount of a discretionary item such as this, having regard to all the circumstances of the case. (2) There is no reason to suppose that the conventional A B

method is other than appropriate to the case of both independent and employed solicitors. (3) It is a sensible and reasonable presumption that the figure arrived at on this basis will not infringe the principle that the taxed costs should not be more than an indemnity to the party against the expense to which he has been put in the litigation. (4) There may be special cases in which it appears reasonably plain that that principle will be infringed if the method of taxation appropriate to an independent solicitor's bill is entirely applied; but it would be impracticable and wrong in all cases of an employed solicitor to require a total exposition and breakdown of the activities and expenses of the department with a view to ensuring that the principle is not infringed, and it is doubtful, to say the least, whether by any method certainty on the point could be reached. ... to make the taxation depend on such a requirement would, as it seems to us, simply be to introduce a rule unworkable in practice and to push abstract principle to a point at which it ceases to give results consistent with justice."

6. In *Cole v British Telecommunications PLC* [2000] 2 Costs Law Reports 310, the Court of Appeal re-visited the issue of in-house legal costs. Mr Cole had been ordered to pay costs incurred by BT at the conclusion of long running litigation in which the company had been represented throughout by its in-house legal department. He argued that to adopt the then conventional approach used in assessing the bill of a solicitor in private practice of adding a percentage uplift figure (B) to an hourly expense rate (A) would breach the indemnity principle if applied to in-house legal services. At [9] Buxton LJ reaffirmed the guidance given in *Eastwood*:

"9. The judgment of this court in *In Re Eastwood* establishes that the conventional method appropriate to taxing the bill of a solicitor in private practice is also appropriate for the bill of an in-house solicitor in all but special cases where it is reasonably plain that that method will infringe the indemnity principle. Such a special case will arise where a sum can be identified, different from that produced by the conventional approach, which is adequate to cover the actual cost incurred in doing all the work done. Such a sum may be identified by concession (see [1975] 1 Ch at pp 130G-131A) or, presumably, by the factual assessment of the taxing tribunal itself: but that possibility does not justify a detailed investigation in every case (*ibid.*, at p132E).

10. In the present case there was no such concession. Mr Post for BT said that the hourly rate table did not make such a concession, and instanced many other matters over and above those set out in the table, including controversial allocation of costs, that would have to be taken into account to achieve a statement of the full cost; and it will be recalled that the Deputy Master saw the table as being an incomplete statement. In those circumstances, it is a matter for the judgment of the expert tribunal as to whether it is satisfied that the material is such as to create a special case in the terms of the guidance in *In Re Eastwood*."

7. It is therefore apparent that the proper approach to the assessment of the costs of an in-house legal department is to follow the method of assessment adopted for the bills of solicitors in private practice unless it is reasonably plain, either from a concession or from material before the court or tribunal, that this would infringe the principle that a party is not entitled to recover more than its actual expenditure. It goes without saying that the F-tT is not entitled to take a different approach, as it is bound by decisions of the Court of Appeal.

The relevant statutory provisions

8. Chapter 2 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 confers on the tenant of a leasehold flat the right to acquire a new lease of that flat. A claim to exercise that right is initiated by giving a notice under section 42. Section 60(1) of the 1993 Act makes the following relevant provision for the tenant who gives such a notice to pay certain costs incurred by the landlord who receives it:

> "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;
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> (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 a 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 personably liable for all such costs.
>
> (3) - (4) .....
>
> (5) A tenant shall not be liable under this section for any costs which are party to any proceedings under this Chapter before an 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 purpose of this Chapter, any other landlord (as defined by section 40(4)) of any third party to the tenant's lease."

The facts

9. The facts giving rise to this appeal are not contentious and can be summarised by reference to the documents included by the parties in the appeal bundle.

10. In 1987 and 1988 occupational leases were granted of flats in a newly-built development known as Trinity Mews in Bury St Edmunds. Each of the leases was for a term of 99 years

from 1 January 1987. By 2014 seven of the leases had come to be vested in the respondents and the freehold interest in Trinity Mews and the reversion to the leases had come to be vested in the appellant.

11. On 28 October 2014 solicitors acting for the respondents served notices of claim under section 42 of the 1993 Act on the appellant. Each of the notices was in substantially the same form, identical apart from the number of the individual flat, the particulars of the lease on which the flat was held, and the date on which the relevant respondent had become its registered proprietor. Each notice proposed a premium of £6,500 for the grant of a new lease on the terms provided for by the 1993 Act and otherwise on the same terms as the existing leases.

12. Instructions to inspect the flats at Trinity Mews and to prepare valuations on behalf of the appellant were promptly given to a surveyor, Mr Gillespie, who carried out the work and submitted his invoice.

13. On 19 December 2014 a company named Estates and Management Limited ("E&M"), describing itself as agents for the appellant, responded to the notices of claim by sending seven counter notices to the respondents' solicitors under section 45 of the 1993 Act. The counter notices were in identical form except for the name and address of the individual respondents and the addresses of their flats. The counter notices admitted the respondents' entitlement to acquire new leases, and accepted their proposed terms other than their suggested premium, and suggested instead a figure of £8,400 per flat together with legal fees of £945 and valuation fees which were not yet quantified.

14. The parties subsequently agreed a premium of £7,950 for each of the new leases but failed to agree the reasonable legal and valuation fees payable. The respondents proposed a fee of £475 plus VAT per flat but E & M refused to reduce its fee below £945. It provided a breakdown of time said to have been spent totalling 4 hours 6 minutes per claim. This included, in each case, 36 minutes spent "checking records", 36 minutes spent "instructing surveyor, preparing and sending all relevant copy documents to surveyor" and 24 minutes "drafting counter notice and serving on all relevant parties". A further 30 minutes was expected to be spent in each case "drafting deed of surrender & new lease" and an hour on "dealing with matters leading to completion". The time spent was charged at a rate of £275 per hour on the basis that a Grade A solicitor had undertaken the work. The total cost per unit calculated using this method was £1,127.50 plus £40 disbursements, but E & M said that it was willing to reduce that sum to £945 "to consider the fact that we are dealing with many claims on the Estate".

15. The respondents refused to pay the fees claimed and on 29 May 2015 they applied to the F-tT for a determination of the sums to which the appellant was reasonably entitled.

The F-tT's decision

16. The F-tT gave directions on 2 June 2015 including a direction for the appellant to provide a document containing the following information:

> "A statement of costs claimed, certified by the solicitor to say that these are the costs contractually payable by the client, setting out (a) the qualification and experience of the fee earner, (b) a breakdown of the number of hours spent or estimated to be spent, (c) details of letters sent and telephone calls and those anticipated (d) as the solicitor is "in-house", details of the overheads of the company so that an hourly rate can be calculated ..."

17. The appellant did not provide all of the information required by the F-tT, in particular no details of the overheads of E & M were supplied. The parties subsequently exchanged points of dispute and reply which identified a number of issues of which the following are still live:

(1) Whether it was appropriate for a Grade A Solicitor to have the conduct of the matter, or alternatively whether the rate charged was excessive and should be replaced by a maximum hourly rate of £200 plus VAT.

(2) Whether the sums claimed took proper account of the repetitious nature of the work undertaken.

(3) Whether the time said to have been spent was excessive.

(4) Whether all of the costs claimed fell within the ambit of section 60.

18. The F-tT began its decision by pointing out that if a commercial landlord wished solicitors to act for it in a series of similar transactions it would negotiate a fixed fee after seeking quotations from a number of different sources. It assumed that no such exercise had been undertaken by the appellant in this case. Nevertheless, the fact that the claims were in relation to properties on the same estate and let on identical leases would result in economies of scale for the appellant, especially as the parties had not been far apart on the premiums payable and there had been no contentious lease terms to be negotiated.

19. In paragraph 18 of its decision the F-tT decided that the work undertaken by the appellant's in-house solicitor was specialised and that Grade A rates would normally be allowed although, as it pointed out, for such a rate the solicitor would be expected to conduct the matters with efficiency. Despite this conclusion the F-tT refused to allow the Grade A rates appropriate to solicitors in private practice. It explained why in paragraphs 19 to 21 of its decision:

> "19. However, charging rates for in-house solicitors are not the same as those allowed in the courts for solicitors in private practice. Those rates are worked out and agreed by the Central Costs Office on behalf of the judiciary as guideline figures taking into account the overheads which would normally be paid by a solicitor in private practice. These overheads would include substantial sums which would not be incurred by an in-house solicitor e.g. professional indemnity insurance (tens of thousands of pounds per

annum for most solicitors), an accounts department to ensure compliance with the Solicitors' Accounts Rules and all of the reception, staff and telephone expenses necessary for a professional person dealing directly with the public.

20. The figures used by the costs office are calculated on what chargeable hours a solicitor would do in the day (normally 5 hours). Holidays etc would then be taken into account to work out an annual number of chargeable hours which would usually amount to 1,000 - 1,250 hours. Overheads would then be calculated including salaries, rents, insurance and other usual overheads incurred by a solicitor in practice plus a profit element.

21. Based on a 5 hour working day, 7 weeks' holiday per year and assuming a salary for the solicitor of £75,000 pa would mean an hourly rate of just under £67 (25 hours per week for 45 weeks per year – 1,125 hours – at £75,000 pa. If the costs of support staff and contribution towards the office overheads was a similar annual amount, then an overall hourly rate of £150 would be reasonable."

20. The F-tT derived support for this approach from a previous decision of its own which made the same calculation and which had been the subject of an unsuccessful application for permission to appeal to this Tribunal. In refusing permission the Tribunal had commented that the F-tT's decision contained no error of law. But, as the Tribunal has previously explained (see Re: *Bradmoss Limited* [2012] UKUT 3 (LC)) the reasons given by the Tribunal for refusing permission to appeal are not to be treated as laying down guidance applicable to other cases. This Tribunal's refusal of permission to appeal therefore conferred no additional status on the F-tT's own previous decision.

21. Paradoxically the F-tT found less assistance in two recent decisions of the Tribunal more directly in point. In both *Re: OM Property Management Ltd* [2012] UKUT 102 (LC) and *Re: Arora* [2013] UKUT 0362 (LC) the Tribunal had applied *Eastwood* (in the latter case to costs payable under section 60 of the 1993 Act). The F-tT felt able to distinguish *Arora* on the grounds that, because the amount involved had been small and the appeal had not actively been opposed, "the Tribunal did not have the benefit of full and complete legal and factual arguments from both sides." The F-tT did not, however, identify any relevant authority which it considered had been overlooked by the Tribunal in *Arora*.

22. *Eastwood* and the other authorities relied on by the Tribunal in *Arora* and *OM Property Management* were described by the F-tT as "old cases". It explained that in the 1970's the assessment of costs by reference to the overheads of the claiming solicitor's firm had been "very haphazard". That situation was contrasted with "the present system" of "evidence-based rates" derived from the audited accounts of large numbers of solicitor firms which had been provided to the Senior Courts Costs Office. But these evidence-based rates were, it was said, "only for solicitors in private practice". The F-tT did not explicitly refuse to follow the leading decision of the Court of Appeal; instead, it purported to apply the *Eastwood* principle in light of "the present system", as it explained in paragraph 26 of its decision:

"Thus, the principle that the charging rates for solicitors both in private practice and "in-house" would be assessed on the same basis has never changed. What has changed since *Re: Eastwood (Deceased)* [1975] Ch 112 is that the starting points for rates

allowed to solicitors in private practice is evidence-based i.e. is based on what their overheads would usually be. That is precisely the reason for ordering the [appellant's] representatives in this case to provide evidence of their overheads so that the same evidence-based process could be used."

By this route the F-tT felt entitled to adopt its own "evidence-based" assessment of the appropriate hourly rate, namely the figure of £150 which it had calculated in paragraphs 20 to 21 of its decision.

23. Moving on to the question of the reasonable time to be allowed, the F-tT made it clear that it was sceptical of the appellant's solicitors time recording, suggesting that "the hours claimed [have] little relationship to the hours actually spent." Using its own experience and omitting routine administrative tasks and the instruction of the surveyor, the F-tT concluded that all of the work falling within section 60(1)(a) (investigations of the tenants' rights to new leases) could have been completed in 1 hour 30 minutes for all seven files and that a further 4 hours ought reasonably to be allowed for the conveyancing tasks covered by section 60(1)(c). Allowing £150 per hour for these 5½ hours provided a total recoverable charge of £825 for all seven transactions.

Issue 1: The proper approach to in-house costs

24. The appellant submitted that the F-tT had been bound to follow the approach to in-house legal costs laid down by the Court of Appeal in *Eastwood*, reaffirmed in *Cole*, and applied by this Tribunal in *OM Property Management* and *Arora*. It was not open to the F-tT to free itself of established lines of authority by dismissing them as "old cases" and to require the appellant to justify the legal costs it claimed by producing the evidence of its overheads and expenses which the Court of Appeal has specifically said ought not to be required.

25. In its submission the respondents emphasised two limitations on the reasonable costs which could be awarded to the appellant. First, the common law indemnity principle which prevented the appellant from recouping more than it had expended in undertaking the tasks covered by section 60(1); and secondly, the statutory restriction imposed by section 60(2) that costs are only to be regarded as reasonable to the extent that they might reasonably be expected to have been incurred if the appellant had not had the right to pass them on to the respondents.

26. As the F-tT pointed out, since the decision in *Eastwood* the method adopted by costs judges when assessing hourly rates for solicitors in private practice has evolved. Rather than aggregating an A rate (reflecting the direct costs of employing the individuals undertaking the work and an appropriate share of the general overheads of the firm attributable to them) and a B rate (covering indirect expenses and other matters which cannot be calculated on an hourly basis together with a profit element) guideline hourly rates are now published by the Senior Courts Costs Office. These provide an indicative range of charges, reflecting a wide variety of work, for solicitors in different bands, (A) to (D), based on levels of experience and with regional gradations (including three bands within London). These rates were last published in 2010 at which time the guideline hourly rate for a Band A solicitor was £201 in Bury St Edmunds and was £229 to £267 in outer London.

27. The F-tT suggested in paragraph 26 of its decision that it was not its intention to depart from the *Eastwood* approach but rather to apply the principle that the charging rates for solicitors in private practice and in-house are to be assessed on the same basis. It considered that in order to remain faithful to that principle it was necessary for it to undertake the same sort of analysis of the appellant's overheads as had been undertaken in relation to thousands of solicitors firms by the Senior Courts Costs Office when it produced the guideline rates. But the inquiry on which the F-tT wished to embark was precisely the inquiry which had filled the Court of Appeal in *Eastwood* with horror. It was in order to avoid a detailed investigation of the overheads of a business only a small part of which was engaged in conducting legal work that the Court of Appeal adopted the "sensible and reasonable presumption" that costs assessed by reference to the charges of solicitors in private practice would not be more than an indemnity to the party making use of its own in-house legal department.

28. The appellant had failed to comply with the F-tT's direction to produce details of its overheads, perhaps on the grounds that to do so adequately would have cost considerably more than the relatively modest sum at stake, or perhaps because it considered that the F-tT was bound by the decision of the Court of Appeal not to undertake a detailed analysis of such material. The appellant might be criticised for not seeking to appeal the F-tT's case management direction, but in a case involving such modest sums, and in which it has no prospect of recovering its costs of such an appeal, its failure to do so might equally be regarded as pragmatic and proportionate. It is also notable that in their points of reply the respondents' solicitors did not protest at the appellant's failure to provide the detailed information required by the F-tT, nor was the approach adopted by the F-tT one which had been advocated by the respondents.

29. The F-tT was not provided with the material it had requested, but nevertheless considered that the indicative or guideline rates for solicitors in private practice were not applicable to salaried solicitors undertaking legal work in-house on behalf of their employer. The reasons it gave were that the overheads of an in-house solicitor were not comparable to those of a private practitioner. But the same could have been said of the Treasury Solicitor in *Eastwood* and of BT's in-house solicitor in *Cole* and, in my judgment, provides no justification for adopting a wholly different approach. The overhead structure of a commercial enterprise will inevitably differ substantially from that of a professional firm, and it is nothing to the point that there are expenses of an independent solicitor's practice which will not be incurred by an in-house lawyer. There will equally be expenses of the in-house employer not found in the accounts of the private practice but for which some claim might be made (which Buxton LJ referred to in *Cole* as the "controversial allocation of costs" which nevertheless "would have to be taken into account to achieve a statement of the full cost"). In some cases, as the Court of Appeal recognised in *Cole*, it may "strain logic" to make the assumption that the indemnity principle is not infringed by the *Eastwood* approach. Nevertheless, in almost all cases, and most particularly in routine cases of very modest value, disbelief must be suspended and strained logic must be tolerated for "the merit of simplicity and of avoiding the burden of detailed enquiry."

30. The F-tT's approach in this case ignored the pragmatic justification underlying the Court of Appeal's conclusion that a detailed inquiry into in-house overheads must be avoided. It did not have the material necessary to determine whether this was a special case, one in which it was reasonably plain that the indemnity principle would be infringed by adopting the

Eastwood approach, nor had it been invited by the respondents to view this as such a case. It had no evidence justifying the assumptions it made about the actual costs and overheads incurred by the appellant. Its conclusions were therefore unsupported by evidence and contrary to principle and must be set aside.

31. The approach which the F-tT should have adopted was to give the appellant the benefit of the presumption in *Eastwood* and to take the costs which would have been charged by a solicitor in private practice as its guide when assessing what were the reasonable costs of and incidental to the tasks referred to in section 60(1) of the 1993 Act. It should not have given the direction which it did for the filing of evidence of the appellant's overheads, because that evidence was both irrelevant to the task it was required to undertake and disproportionate to the costs it was required to assess.

Issue 2: the scope of section 60(1)(b)

32. The costs claimed by the appellant included the cost of having its in-house solicitor instruct the surveyor, prepare and send relevant documents to him and advise on his valuation report. This work was said to have occupied the solicitor for 48 minutes in each case, a total of more than 5 hours 30 minutes.

33. Section 60(1)(b) entitles a landlord to recoup from the enfranchising tenant the reasonable costs "of and incidental to ... 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". The F-tT ruled that this "certainly does not cover instructing the valuer, [or] advising on the valuation report".

34. The F-tT refused to grant permission to appeal on that issue but, as I have already said, I consider the appellant has arguable grounds for contending that the F-tT was wrong to take so narrow a view of the scope of section 60(1)(b). It is convenient to consider that issue at this point.

35. The appellant argued that the cost of instructing the valuer to prepare reports was clearly "incidental" to the valuation. If the appellant had instructed the valuer itself it would have been entitled to recover its own in-house costs of doing so and there was no reason why the fact that it had been its solicitor, rather than another employee who undertook that task should make a difference. It relied on the recent decision of the Tribunal (Her Honour Judge Robinson) in *Columbia House Properties (No.3) Ltd v Imperial Hall Freehold Ltd* [2015] UKUT 45 (LC) for the statement of general principle (at paragraph 11) that:

> "There is no reason in principle why costs incurred under s.33 should not include the costs of a professional agent, be they managing agent, valuer or solicitor. ... If a freeholder chooses to use agents to carry out work then it may recover those costs provided they relate to the matters set out in subsection (1)(a) to (e) and are reasonable which includes that they are such as might reasonably be expected to be incurred by him if he had been personally liable for them."

Columbia House was a case under section 33 of the 1993 Act which is concerned with the costs of collective enfranchisement, and the agent in question was a managing agent, but I accept the appellant's submission that the principle is equally applicable to costs payable under section 60.

36. I agree with the appellant that the task of instructing a surveyor is incidental to a valuation. Nevertheless in a case such as this it is an administrative rather than a professional task which no doubt relies on the use of standard instructions given to a surveyor who is very familiar with the requirements of statutory valuations under the 1993 Act. Where those administrative tasks are entrusted to a solicitor the client would not expect to be charged an additional fee, but would expect the expense to be subsumed instead in the fee payable to the solicitor for his or her own work.

37. I also accept that considering the valuation report of the surveyor is a task incidental to the valuation itself. Moreover, it is not an administrative task and it is legitimate, in my opinion, for the client to expect the solicitor who gave the instruction to consider the valuation and to be satisfied that it is in accordance with the basis of valuation required by the Act. I can see no reason why a client would not reasonably and willingly pay for that task to be undertaken, even where he is liable to meet the cost personally.

38. In a case in which an experienced surveyor is engaged to provide a valuation of a very modest property the work involved in considering and advising on the report ought not to be particularly time consuming. In this case it is said to have taken 12 minutes to advise on a single report and to take instructions, which seems reasonable. What does not seem reasonable is that the same time should have been spent in considering and advising on each of the seven reports. There is no reason to doubt that the reports were very similar indeed, as the flats were very similar and the valuation was identical in each case. All that was required, having read the first report, was for the solicitor to satisfy himself that that was the case, which could be done almost at a glance. A generous allowance for reading and considering all seven reports would therefore be 20 minutes.

Issue 3: the appropriate hourly rate

39. The F-tT's hourly rate of £150 is challenged by the appellant, which argues instead for a rate of £275 by reference to the Band A guideline rates for outer London. It points out that the F-tT accepted that the engagement of a solicitor with Band A experience was appropriate because it considered the work to be specialised. It argues that a London rate was also appropriate and that even if a Bury St Edmunds rate is preferred the 2010 guideline rate was £191, not £150. It points out that in *Arora* an hourly rate of £250 was allowed (although that was for a single transaction).

40. For the reasons already given I am satisfied that the F-tT was not entitled to calculate its own in-house rate, but should have made its assessment by reference to the costs of a Band A solicitor in private practice. Rather than send the matter back to the F-tT for further consideration it is open to the Tribunal to resolve the dispute. The question of the appropriate hourly rate to be used as a guide involves a choice between London and Bury St Edmunds' rates. That choice cannot be determinative, however, both because London rates are

themselves a range, and because even after carrying out an arithmetical calculation based on one rate or the other it is still necessary to consider the ceiling imposed by section 60(2) and to ask whether the resulting figure represents the cost which would have been incurred had the appellant been required to pay for the necessary legal services from its own pocket without the right to pass the charges on to the respondents.

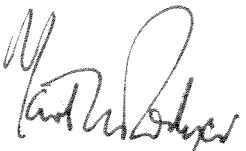
41. The evidence before the F-tT of the costs incurred by the appellant was in the form of a schedule signed by Mr Bux, its in-house solicitor, who certified that he would require to spend just over 4 hours on each of the seven files, making a total of 29 hours. This total included a number of administrative task which the F-tT considered did not fall within section 60(1); if these are omitted the time spent by Mr Bux on the remaining tasks amounted to 2 hours 48 minutes per file (including considering and advising on the valuation), making a total of over 19 hours. The F-tT determined that the reasonable time required to complete the work reasonably required and falling within section 60(1) was 5 hours 30 minutes for all seven transactions. This assessment took full account of the repetitive nature of the work required in each case. It has not been challenged in this appeal (although it is fair to say that the omission to challenge is not any sort of acknowledgement by Mr Bux that the time he spent on each file was excessive; he points out, for example, that 5 hours was considered a reasonable time to spend on a single transaction in the *Arora* case).

42. It is obviously the prerogative of the appellant to undertake its legal work through its in-house solicitor, even though that work might (if the F-tT's assessment is correct) take the in-house solicitor more than three times as long as is reasonably required. It is not the function of the Tribunal to question the wisdom of the appellant's choice but to consider whether the appellant would have been willing to agree to pay a bill of the magnitude claimed in this case if it had been unable to pass that bill on to the respondents. The appellant is only entitled to recoup the costs which it would have incurred if it was personally liable to meet them, and where it is contended that a landlord's bill is excessive, identifying the ceiling imposed by section 60(2) is likely to be the determinative issue in the case.

43. The F-tT found that if it had been personally liable to meet the costs, and had used an independent solicitor, the appellant would have negotiated a fixed fee for the whole package of work; it also found that there were solicitors experienced in lease extension work closer to Bury St Edmunds than London. The opportunity to use a less expensive local solicitor in preference to a London solicitor would no doubt have influenced the price the appellant would have been willing to pay for the work. If London rates were felt to be appropriate, local competition would therefore have exerted downward pressure on those rates and would have resulted in a fee at the bottom of the Band A scale at around £230 per hour.

44. After adding an additional 20 minutes to the 5 hours 30 minutes allowed by the F-tT and assuming a rate of around £230 per hour, I am satisfied that the reasonable cost of the work which the appellant would have been willing to pay from its own pocket to a solicitor in private practice, and which it would therefore have considered acceptable from its in-house provider, would have been £1,400 plus disbursements of £40 in each case. This gives a total of £1,680 or £240 per flat for the seven flats dealt with at the same time.

45. I am satisfied that the figure of £1,105 allowed by the F-tT was too low, and that a figure of £1,680 should be substituted (no VAT is payable). That figure properly reflects what the appellant itself described as "the fact that we are dealing with many claims on the Estate" when it reduced its time charge. It will also properly reimburse the appellant, without yielding a profit, for the legal services it reasonably required as a result of the exercise by the respondents of their right to acquire new leases.



Martin Rodger QC

Deputy President

10 March 2016