UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LEASEHOLD ENFRANCHISEMENT- Costs incurred in connection with new lease to be paid by the tenant – Leasehold Reform Housing and Urban Development Act 1993 s.60 – whether recoverable costs include solicitors' fees in relation to landlord's counter-notice and instructing a valuer – consideration of possibility of landlord negotiating a quantum discount with solicitor where numerous lease extensions contemplated

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

BETWEEN:

SINCLAIR GARDENS INVESTMENTS (KENSINGTON) LIMITED

Appellant

and

PAUL KENNETH CHARLES WISBEY
LESLEY BARBARA MARY WISBEY

Respondents

Re: 53 Lygean Avenue,
Ware,
Herts
SG12 7AR

Before: His Honour Judge Huskinson (sitting with the Registrar as an assessor)

Sitting at the Royal Courts of Justice, London WC2A 2LL
on
26 April 2016

Oliver Radley-Gardner, instructed by W H Matthews & Co, appeared for the Appellant
The Respondents did not appear and were not represented.

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The following cases are referred to in this decision:

Metropolitan Property Realisations Limited v Moss [2013] UKUT 0415 (LC)

Sidewalk Properties Ltd v Twinn [2015] UKUT 0122 (LC).

DECISION

Introduction

1. This is an appeal, with permission, from the decision of the First-tier Tribunal Property Chamber (Residential Property) ("the F-tT") dated 8 September 2015 whereby the F-tT gave a decision upon the amount of costs properly recoverable by the appellant from the respondents under section 60 of the Leasehold Reform Housing and Urban Development Act 1993 in respect of a lease extension granted by the appellant as landlord to the respondents as tenants. The dispute was concerning the amount payable in respect of the appellant's solicitors' fees. The appellant claimed £1,725 plus VAT. The F-tT decided that only £845 plus VAT was payable.

2. The respondents have not taken any part in the present appeal.

3. I sat with the Registrar of the Upper Tribunal (Lands Chamber) who was acting as an assessor who assisted me with expert advice upon questions regarding costs. I am grateful for his assistance. The decision in the case is my decision alone.

4. The respondents hold 53 Lygean Avenue, Ware, Herts SG12 7AR ("the flat") from the appellant upon a long lease at a low rent. The respondents served upon the appellant a tenant's claim to a new lease given under section 42 of the Act dated 19 August 2014. The appellant served a counter-notice under section 45 dated 9 October 2014. By the counter-notice the appellant admitted that the respondents had on the relevant date the right to acquire a new lease of the flat and it made counter proposals regarding certain matters to be included in the new lease including in particular the amount of the premium to be paid. The respondents had proposed a premium of £8,500. The appellant proposed a premium of £10,981.

5. I was told that all the terms of the new lease were agreed by 4 February 2015 and that the new lease was actually completed on 12 March 2015. The only outstanding matter of dispute between the appellant and the respondents was the amount of the costs under section 60 to be paid by the respondents. The respondents referred the matter for a determination by the F-tT pursuant to section 91 of the Act. Section 60 of the Act provides as follows:

> **"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 purpose 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."

6. The appellant submitted to the F-tT a detailed statement of costs signed with a statement of truth by Mr Paul Chevalier, a solicitor. In summary the bill was broken down into three categories of work namely (a) solicitor's work dealing with the notice of claim and the valuation matters, (b) solicitor's work dealing with the grant of the lease and (c) the work done by the valuer. The valuer's costs were £600 plus VAT and were agreed. It is not necessary to consider those costs any further. As far as concerns the other two categories of costs these were given in more detail at pages 21-22 of the bundle in the following terms:

(A) Notice of Claim Engaged (36 units) in:-

1.	26.08.14 06.10.14 09.10.14	Personal attendances on client obtaining instructions and advising. (6 units)	
2.	26.08.14 06.10.14	Considering the Lease and Office Copy Entries (3 units)	
3.	26.08.14	Instructing Valuer (3 units)	
4.	26.08.14	Preliminary Notices (3 units)	
5.	06.10.14 09.10.14	Considering validity of Tenant's Notice (4 units)	
6.	06.10.14 09.10.14	Researching questions which need to be confirmed in connection with investigating Tenant's right to new lease (8 units)	
7.	09.10.14	Drafting Counter Notice (3 units)	
8.	08.10.14	Considering Valuation (2 units) and	

		discussing same with client (1 unit) and Valuer (2 units)	
		Considering service on Third Party (1 unit)	900.00
		4 Letters out to client seeking instructions/updating as to progress, 2 letters out to Valuer, 3 letters out to Nominee Purchaser/Solicitors	225.00
		Vat at 20%	1125.00
			225.00
			£1350.00

(B) The costs which have been incurred in connection with the grant of the lease is 20 units spent as follows:-

		Units
09.10.14	Considering terms of lease for inclusion in Counter-notice	(2)
29.01.15	Drafting new lease incorporating terms in Counter-notice	(3)
	Attendances and correspondence with client	(3)
03.02.15	Considering revisions thereto	(2)
04.02.15	Agreeing final form of lease	(2)
23.02.15	Prepare 2 engrossments	(1)
	Prepare Completion Statement	(2)
	Attend to Completion	(5)
	4 letters out	(4)
		24
	24 x £25	600.00
	VAT at 20%	120.00
		720.00

The statement of costs document also gave further details of the nature of the work involved in the various matters mentioned in these tables. One unit of charge represented six minutes of chargeable time.

7. There was before the F-tT a letter from the appellant to its solicitors W H Matthews & Co dated 2 July 2015 accepting liability to pay legal costs in accordance with this statement of costs. The letter confirmed that the appellant had agreed that as from 19 July 2013 it would pay for the legal services of WH Matthews & Co in respect of enfranchisements lease extensions and the associated conveyancing at the rate of £250 per hour in so far as they were not recoverable from the nominee purchaser/tenant. The letter also contained the following passages:

> "We confirm that enfranchisement and lease extensions are a core business of this Company and we would not instruct a more junior Solicitor at a lower hourly rate if paying the costs ourselves.
>
> We are the owner of a very significant number of freehold reversions: it is our core business in which we intend to remain. We are in the business for the long term. We have no cash flow difficulties. If a claim is invalid the premium payable following service of a valid Notice of Claim

is likely to increase. Our Solicitors are therefore instructed to thoroughly investigate that the Tenant has strictly complied with each and every requirement of the Act with a view to ensuring that the Tenant does not obtain a new lease unless it is entitled to it. We require our Solicitors to keep us informed throughout; make no decisions as to terms of acquisition or waiver without our express instructions and to consider the factual matrix of the valuation. We confirm that we would pay the costs of fully complying with these instructions if paying them ourselves."

8. Before the F-tT the respondents made certain submissions in a letter dated 16 June 2015. After making various general observations regarding fees charged by the appellant and its solicitors, this letter referred to a decision in another case at 24 Lygean Avenue which the respondents suggested was almost identical and where the solicitors had sought costs of £2,070 which were reduced by the F-tT to £845 plus VAT. The letter also contained certain comments regarding the amount of time spent on certain items and whether certain items were recoverable at all. These comments are incorporated within paragraph 11 of the F-tT's decision in the following terms:

"11. The objections to the legal costs are short and are set out as follows:-

(1) Instructing Valuer
Not within Section 60 – 3 units to be deducted

(2) and (3) Preliminary Notices and Considering Validity of Tenant's Notice
Overcharge – 9 units to be deducted

(3) Drafting Counter-Notice
Not within Section 60 – 3 units to be deducted

(5) Considering Valuation and Discussing with Valuer
Not within Section 60 – 4 units to be deducted

(6) Conveyancing costs
Excessive as a Grade A fee earner is not required for this work.
Fees should not exceed £300, reasonable amount to be determined by the Tribunal.

Also the writer of the letter included the following observation:

"In conclusion, I would just add that I am advised by Leasehold Solutions that they currently have 21 further Lease extensions lodged in respect of Lygean Avenue and there is thus a significant repetitive element of this work. It is unreasonable for the solicitors to exploit their monopoly position in their fee charges."

The F-tT's Decision

9. The F-tT concluded that certain items of solicitor's work for which the appellant sought to charge the respondents were items of work which were not properly chargeable at all to the respondents having regard to the proper construction of section 60. The F-tT expressed itself in the following terms in paragraph 19 and 20:

"19. Thus, as far as legal costs are concerned, the landlord is entitled to recover the legal costs in obtaining advice on the tenant's entitlement to a new lease and then the work involved in the granting of the new lease. The Respondent's solicitors say that the words "*and incidental to*" are extremely significant. They are, but they do not change or expand the wording of the section.

20. To suggest that the words "*and incidental to"* extend to include the solicitor instructing the valuer, advising on the valuation report and dealing with the counter-notice is wrong. The Respondent in this case is a well known company with a large portfolio of property. It is perfectly able to send a copy of the lease and office copies of the freehold title to a valuer and ask for a valuation within the period allowed before a counter-notice is to be served. If it appears that proposals in the Initial Notice need to be challenged, then there is no agreement and the landlord has a choice. It can instruct lawyers to deal with the counter-notice and give advice on other matters such as the valuation, but it knows that it will have to pay for that."

10. In paragraph 25 the F-tT referred to the letter from the appellant saying that if it had been liable personally it would itself pay these costs (see paragraph 7 above). The F-tT said:

"Well, to use an often quoted colloquialism, "they would say that wouldn't they".

The F-tT was not prepared to accept this letter at face value and observed that it must decide whether, on the balance of probabilities, that was actually the case.

11. The F-tT observed that the lease was a straightforward matter because the terms of the deed of surrender and the new lease were dictated by the 1993 Act; that there was no need for a grade A fee earner to deal with that; and that on the open market a company such as the appellant who had to pay for this out of its own pocket would expect a solicitor to quote in advance and do the work on a fixed price basis. It concluded it was not realistic to suggest that a company would pay £600 to complete such a transaction. At paragraphs 26 and 27 the F-tT stated as follows:

"26. As had been said, the commercial reality is that if a landlord had to pay its own costs, it would seek to negotiate a fixed fee for a number of similar transactions on one estate – it does not seem to be disputed that in June 2015 there were 21 further lease extensions proposed in this estate – all using a standard form of deed of surrender and new lease. That has clearly not happened in this case as no details have been mentioned. To satisfy the indemnity test, the solicitors would have had to disclose such an agreement and they have not. Therefore, the Tribunal has to make a determination of reasonableness taking into account, in its experience, what would have been paid as a fixed fee.

27. It was this Tribunal that determined in the case of 24 Lygean Avenue that the reasonable legal fees payable by the tenants were £845 plus VAT. That decision was not appealed, so far as is known, and the Respondent's solicitors, knowing that 24 Lygean Avenue was being used by the Applicants as a comparator, have not drawn the Tribunal's attention to any additional complications or reasons why more time had to be spent in this case. Thus, and for the reasons set out in that decision, which must be considered as well as these reasons, the same figure is determined to be the reasonable legal costs payable pursuant to section 60."

The Appellant's submissions

12. On behalf of the appellant Mr Radley-Gardner advanced the following arguments.

13. In summary he argued:

(1) that the F-tT was wrong in its construction of section 60(1) and, in particular, in its conclusion as to whether costs were "of and incidental to" certain matters;

(2) that the F-tT was wrong to proceed on the basis that the appellant, if personally liable for all the costs, would have negotiated some form of fixed price for the work based upon a quantum discount; and

(3) the F-tT was wrong merely to adopt as its conclusion a charge approved in another case rather than deal with the facts of the present case and the bill of costs submitted in the present case.

14. Mr Radley-Gardner referred to the decision of the Deputy President in *Metropolitan Property Realisations Limited v Moss* [2013] UKUT 0415 (LC) at paragraphs 9-11 where the Tribunal summarises the purpose of the cost charging provisions in section 60:

> "9. These provisions are straightforward and their purpose is readily understandable. Part I of the 1993 Act is expropriatory, in that it confers valuable rights on tenants of leasehold flats to compel their landlords to grant new interests in those premises whether they are willing to do so or not. It is a matter of basic fairness, necessary to avoid the statute from becoming penal, that the tenant exercising those statutory rights should reimburse the costs necessarily incurred by any person in receipt of such a claim in satisfying themselves that the claim is properly made, in obtaining advice on the sum payable by the tenant in consideration for the new interest and in completing the formal steps necessary to create it.
>
> 10. On the other hand, the statute is not intended to provide an opportunity for the professional advisers of landlords to charge excessive fees, nor are tenants expected to pay landlords' costs of resolving disputes over the terms of acquisition of new leases. Thus the sums payable by a tenant under section 60 are restricted to those incurred by the landlord within the three categories identified in section 60(1) and are further restricted by the requirement that only reasonable costs are payable. Section 60(2) provides a ceiling by reference to the reasonable expectations of a person paying the costs from their own pocket; the costs of work which would not have been incurred, or which would have been carried out more cheaply, if the landlord was personally liable to meet them are not reasonable costs which the tenant is required to pay.
>
> 11. Section 60 therefore provides protection for both landlords and tenants: for landlords against being out of pocket when compelled to grant new interests under the Act, and for tenants against being required to pay more than is reasonable."

15. He pointed out that the drafting of section 60 contemplated that certain categories of cost were to be excluded from being recoverable, see subsections (3), (4) and (5). For instance subsection (5) makes clear that a tenant is not to be liable under section 60 for any costs which a party to any proceedings under that chapter of the Act before the appropriate tribunal incurs in connection with the proceedings. He argued that the draftsman was well able to make provision excluding certain categories of cost if it was desired to do so. There was no provision excluding from being a recoverable category of cost the cost of

a counter-notice or of a solicitor's involvement in instructing a valuer. He pointed out that the service by a landlord of a counter-notice is a necessary step if the landlord is to have any useful status in the negotiations regarding the price to be paid or the terms of the lease. The omission to serve a counter-notice can have grave adverse consequences upon a landlord. The service of a counter-notice is the result of the investigation undertaken by the landlord (or by the landlord's solicitor on its behalf) as to the tenant's right to a new lease. The service of the counter-notice is also a necessary step in so far as the landlord can make any useful submissions regarding the price to be paid under schedule 13 or regarding the terms of the lease which is to be granted. He submitted that the F-tT gave inadequate width to the expression "and incidental to" in section 60(1). The costs of the counter-notice could therefore be said to be costs "of" or "incidental to" each of the sub-paragraphs (a), (b) and (c) in section 60(1).

16. As regards the legal costs of a solicitor involving themselves in the instruction of a valuer and in considering the valuer's report once prepared, Mr Radley-Gardner pointed out that it is common if not universal that the valuation exercise in a case under schedule 13 is not wholly divorced from the legal exercise; that the valuation provisions under the Act are by no means straightforward; and that it is reasonable for a solicitor to be involved both before the valuation is made (i.e. in instructing the valuer) and after the valuation is made (i.e. in checking the valuation to make sure that it is in accordance with correct legal principles).

17. Mr Radley-Gardner argued that the question is not "what is it reasonable to impose by way of costs upon the tenant?". The question instead is: "What were the reasonable costs for the landlord to incur if the landlord was itself personally paying those costs?" He submitted it was reasonable for the appellant to instruct solicitors who were experienced in this specialised area of law. He pointed out that the rate of charge of £250 per hour (plus VAT) for such a solicitor was not suggested by the F-tT to be too high.

18. I asked Mr Radley-Gardner whether upon the proper construction of section 60(2) the correct approach was as follows, namely to note that any costs incurred by a landlord on solicitor's fees 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 the landlord if the circumstances had been such that the landlord was personably liable for all such costs. I asked whether there was therefore a burden upon a landlord claiming such costs from a tenant to show that the provisions introduced by the words "if and to the extent that" were satisfied and the extent to which they were satisfied. Mr Radley-Gardner submitted that there was little to be gained from examining the burden of proof. However he also submitted that a landlord would *prima facie* discharge that burden of proof (such that it then became a burden upon the tenant to disprove the proposition) if a landlord undertook the following steps:

(1) the landlord provided a document to show that the costs had actually been incurred as between the landlord and its solicitors;

(2) the landlord showed that these costs fell within the proper construction of section 60(1);

(3) the landlord gave a sufficient breakdown of the costs to show what steps had actually been taken by the solicitor and how much time has been spent on the various steps and had shown the steps taken and the amount of time spent to be reasonable;

(4) the landlord had explained the charge rate per hour and shown that to be reasonable.

19. As regards the F-tT's analysis of the prospect of a landlord obtaining effectively a quantum discount leading to a fixed price basis for the grant of new leases, Mr Radley-Gardner pointed out that section 57 was a complicated and lengthy section which did not "dictate" (the word used by the F-tT) the terms of the new lease. There was scope for and indeed a need for the landlord's solicitor to consider the terms of the new lease. These terms could not safely be copied from some other document without consideration of the facts of the particular case in question.

20. As regards the question of whether a landlord who was personally liable for its solicitor's costs could reasonably be expected to pay upon a time spent basis rather than negotiate some quantum discount on a fixed fee basis, Mr Radley-Gardner submitted that in the present case it was not unreasonable for the appellant not to have such a block deal. He accepted that the position may be different in other cases, for instance where a landlord knows that there will be X number of more or less identical transactions coming forward at effectively the same time where all the tenants are represented by the same solicitors such that the cases were in effect conjoined. However in the present case such limited evidence as there is indicates that the present transaction was one of the earlier transactions which was completed in March 2015. All that the respondents had asserted in their representations was that they were advised that there were 21 further lease extensions lodged in respect of Lygean Avenue as at June 2015. This was a vague assertion of fact by the respondents which was in fact inaccurate, see paragraph 26 of the document whereby the appellant sought leave to appeal (page 114 of the bundle).

21. He also submitted that it was an inappropriate exercise of the costs jurisdiction conferred upon the F-tT by section 91 for the F-tT to reject the costs bill (at an acceptable rate of £250 per hour) based upon time spent, with particulars given regarding time spent upon each of various items, and for the F-tT instead to "copy and paste" a decision by a different Tribunal on a different property. He also drew attention to the fact that the calculation by the F-tT in the case of 24 Lygean Avenue contains a substantial mathematical error in that the figure of £845 plus VAT was obtained by the deduction of 49 units from the original bill of costs, whereas upon the F-tT's own analysis the deduction should only have been 31 units (the error arose from a deduction of 30 units being made in respect of the £600 charged for the costs of the lease whereas what was intended was a reduction from £600 to £300 which is only 12 units).

Discussion

22. This appeal is an appeal by way of review. It is therefore first necessary for me to consider whether the F-tT has made an error of law or principle such that its decision cannot be allowed to stand.

23. The 1993 Act specifically provides in section 45 for the service by a landlord of a counter-notice. This is a crucial step in the procedure. Failure by a landlord to serve a proper counter-notice can have serious adverse effects upon the landlord's position. I consider it to be reasonable for a landlord to instruct a solicitor, experienced in this specialised area of law, to consider a tenant's claim to a new lease under section 42 and to advise upon the terms of a counter-notice. However the F-tT did not disallow the costs of the counter-notice on the basis that the appellant had acted unreasonably in involving the solicitor in advising upon and drafting the counter-notice. Instead the F-tT disallowed the costs of the counter-notice on the basis that the charging provisions in section 60 were not sufficiently wide to include the costs of a solicitor dealing with a counter-notice, even if it were reasonable for the landlord to instruct a solicitor to deal with the counter-notice.

24. I am unable to agree with the F-tT's decision upon this point. Section 60(1) allows recovery of the reasonable costs "of and incidental to" the matters mentioned in sub-paragraphs (a), (b) and (c). The service of the counter-notice is effectively the result of the work undertaken within sub-paragraph (a) (the investigation reasonably undertaken of the tenant's right to a new lease), and the service of the counter-notice is a necessary step to be taken if the landlord is to be able to advance its arguments regarding the valuation of the flat and the price to be paid (i.e. the valuation matters contemplated in sub-paragraph (b)). The service of the counter-notice is also a necessary prerequisite, so far as the landlord is concerned, of the grant of the new lease under section 56. It is true that a new lease can be granted even though no counter-notice has been served, but if the landlord is to have a satisfactory status upon which it is able to make representations regarding the terms of the grant of the new lease it is necessary that it has served a valid counter-notice. In short I consider that the costs of a counter-notice can be said to be costs which fall within the expression "of and incidental to" in relation to each one of the sub-paragraphs (a) (b) and (c) of section 60(1).

25. I also am unable to accept the F-tT's decision that solicitor's costs in instructing a valuer and in considering the valuer's report are outwith section 60(1). In my view such costs are "of and incidental to" the matters in sub-paragraph (b) namely the valuation of the tenant's flat obtained for the purpose of fixing the premium under schedule 13. The provisions regarding the price to be payable and the calculation of premium under section 13 are complicated. I consider it is reasonable for a landlord to instruct a solicitor to be involved in relation to the valuer's report. Once again, however, the F-tT disallowed this category of cost not on the basis that it was unreasonable for the solicitors to be involved in relation to the valuation report but on the basis that the solicitors' costs in instructing the valuer and considering the valuation report were outwith section 60. I cannot agree. If a solicitor instructs a valuer to produce a valuation and then considers the valuation once it is provided, then the solicitor's costs are "incidental to" the valuation. If they are incidental to the valuation then they are properly recoverable providing they are reasonable having regard in particular to section 60(2). I observe a similar conclusion was reached by the Upper Tribunal (Martin Rodger QC, Deputy President) in *Sidewalk Properties Ltd v Twinn* [2015] UKUT 0122 (LC), although I notice that in that case the Tribunal considered that the instructing of the valuer (as opposed to the later consideration of the valuer's report) was an administrative rather than a professional task for which no separate time charge could reasonably be made. I agree.

26. I note that Mr Chevalier is a solicitor who has much experience in this specialised area of law. I consider it reasonable for the landlord to instruct such a solicitor. I consider that a rate of charge of £250 per hour (plus VAT) to be a reasonable rate of charge – the F-tT did not suggest that this was an excessive rate save in respect of the grant of the new lease.

27. As regards the number of units (each unit being 6 minutes) used and the amount of work done by the solicitors in carrying out the first category of work (see paragraph 6 above) I do not see anything there which could properly be described as unreasonable in relation to a one-off transaction, save for the three units in relation to instructing the valuer (see the comments of the Deputy President in the *Sidewalk Properties* case). Upon this point I am confirmed in the view I would have reached anyway by the advice from the Registrar that he, also, sees nothing unreasonable in the amount of time spent upon the various items of work listed within this category of work or the amount charged if this was a one-off transaction.

28. As regards the second category of work (see paragraph 6 above) these concern the costs of the lease. Having regard to the amount of units used and the amount of work done, as explained in the

appellant's statement of costs document, once again I do not see that an unreasonable amount of time has been spent upon this work if judged in relation to a one-off transaction. Once again I am confirmed in this view by advice from the Registrar that he sees nothing unreasonable in the amount of time spent upon the various items of work listed within this category or the amount charged if judged in relation to a one-off transaction. Bearing in mind the specialised nature of the transaction (involving the grant of a new lease under the 1993 Act) I consider it reasonable for the appellant to continue to use for this category of work a person of the experience of Mr Chevalier rather than using some lower grade fee earner.

29. The foregoing conclusions are however subject to the following point. There was evidence before the F-tT that this transaction involved the grant of a new lease of a flat in a development where there had already been at least one previous such grant (namely in respect of 24 Lygean Avenue) and where there was the prospect of numerous further such grants. The F-tT found (see paragraph 26 of its decision) that if a landlord had to pay its own costs it would seek to negotiate a fixed fee for a number of similar transactions on one estate. The F-tT observed that that had clearly not happened in the present case because no details had been mentioned.

30. The appellant can only recover reasonable costs. It is necessary to return to section 60(2) which provides that costs incurred by the appellant in respect of professional services (here solicitor's fees) "shall only be regarded as reasonable if and to the extent" that costs in respect of such solicitor's services might reasonably be expected to have been incurred by the appellant if the circumstances had been such that the appellant was personally liable for all such costs.

31. In my judgment on the proper construction of section 60 there is a burden upon the landlord who is claiming costs for professional services (which therefore fall within section 60(2)) to prove that the costs are (and the extent to which the costs are) reasonable. This follows from the provision that costs "shall only be regarded as reasonable" if and to the extent provided for by the following words.

32. The F-tT held that the solicitor's costs claimed were not reasonable within section 60 because this was a case where a landlord who was paying its own costs would seek to negotiate a fixed fee and where there was no evidence of any negotiation for such a fixed fee. In my judgement the F-tT was entitled so to hold. In circumstances where there was a clear opportunity for the appellant to negotiate a fixed fee/quantum discount the appellant neither proved that it had obtained some fixed fee/quantum discount arrangement with the solicitors nor proved that it had attempted to obtain such an arrangement but had been unable for good reason to do so.

33. I do not overlook the arguments advanced by Mr Radley-Gardner upon this point (see paragraph 18 above). However in my judgment these arguments do not properly recognise the fact that there is (as I find) a burden upon the appellant to show that the solicitors' costs are reasonable within section 60(2). In a case where there was a clear opportunity to seek to negotiate a quantum discount/fixed fee arrangement I consider that the F-tT was entitled to conclude that this burden had not been discharged in circumstances where there was no evidence that a negotiation for a quantum discount/fixed fee had even been attempted. The justification for such a finding is further confirmed if one remembers that the total fees charged including VAT were £2070 which is a substantial proportion of the amount of the premium contended for by the appellant (namely £10,981) and is almost equal to the whole of the difference between the premium which the respondents were offering to pay (£8500) and this premium contended for by the appellant.

Such figures underline the likelihood that a landlord who was personally liable for the solicitor's costs would obtain a quantum discount/fixed fee arrangement.

34. In summary the F-tT was entitled to find that if the appellant was personally liable for all solicitor's costs it would have negotiated a quantum discount/fixed fee and would in consequence only have been liable for substantially less by way of solicitor's costs than the appellant in fact incurred to its solicitors.

35. The F-tT did not specifically make a finding as to the extent of any quantum discount/fixed fee reduction that might reasonably be expected to have been negotiated if the appellant was personally liable for all such costs. Instead the F-tT assessed the reasonable costs on a different basis, namely by reference to the F-tT's decision in relation to 24 Lygean Avenue which was a decision which proceeded upon a basis which included a finding (which I have held to be incorrect) as to whether certain items of solicitor's costs were within the words "of and incidental to" in section 60(1). Also the decision in that case contains a substantial arithmetic error. In these circumstances I conclude that the decision of the F-tT in the present case cannot be upheld. I must make my own decision upon this point.

36. In the absence of any evidence from the appellant (with reasons) as to why a quantum discount/fixed fee reduction was not available in respect of the solicitors' costs, I conclude that the extent that the solicitors' costs might reasonably be expected to have been incurred by the appellant if the circumstances had been such that the appellant was personally liable for all such costs is that the appellant might reasonably be expected in these circumstances to have negotiated a substantial reduction in the nature of a quantum discount/fixed fee. I recognise that in each separate transaction there would be a certain amount of work which would need in any event to be done in relation to the particular facts of that transaction. Also the solicitor would carry a personal responsibility for each separate transaction. However in the present case there was scope for a quantum discount/fixed fee arrangement to recognise the fact that the solicitor in each separate transaction would be carrying out work which was to a substantial degree repetitive and which therefore would take less time than would otherwise be demanded. Taking into account all the circumstances, including the amount of the full solicitor's costs claimed when compared with the amount of the premium in the present case, I conclude that what might reasonably be expected in the circumstances under consideration is that the appellant would have obtained a 20% discount such that it was required to pay no more than 80% of the costs which would be applicable if the transaction had been a one-off transaction rather than one of potentially many similar transactions.

Conclusion

37. Accordingly I allow the appellant's appeal but only to the following extent. I conclude that the appellant is entitled under section 60 to recover solicitor's costs from the respondents calculated as follows. The amount of the reasonable costs (excluding VAT) for a one-off transaction would have been £1650, being the sum of £1725 which was claimed by the appellant minus three units in respect of the costs of instructing a valuer at £25 per unit. The appellant is entitled to recover 80% of this sum of £1650 which is £1320. The amount recoverable is therefore £1320 plus VAT.

Dated: 12 May 2016

His Honour Judge Huskinson