

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

**Neutral Citation Number: [2018] UKUT 282 (LC)
Case No: RAP/22/2017**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – rent determination – assured periodic tenancy – valuation – assessment of comparables – determination of rent under section 14 Housing Act 1988 – appeal allowed in part

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

BETWEEN:

MR BASSAM CHEHAB

Appellant

and

CADOGAN ESTATES LIMITED

Respondent

**Re: 5 Bourne House,
189 Sloane Street,
London.
SW1X 9QT**

Before: A J Trott FRICS

**Royal Courts of Justice, Strand, London WC2A 2LL
on
31 July 2018**

Mr Kevin Ryan, partner in Carter Jonas LLP, for the appellant
Toby Boncey, instructed by Pemberton Greenish LLP, for the respondent

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The following cases are referred to in this decision:

Mundy v Sloane Stanley Estate Trustees [2018] HLR 13

Marklands Limited v Virgin Retail Limited [2003] EWHC 3428 (Ch)

DECISION

Introduction

1. On 11 August 2017 the First-tier Tribunal (Property Chamber) (“FTT”) determined the rent payable for an assured periodic tenancy of Flat 5, Bourne House, 189 Sloane Street, London SW1X 9QT at £31,952 per annum from 29 May 2017 (the valuation date) under section 14 of the Housing Act 1988.

2. The FTT refused permission to appeal to the tenant, Mr Bassam Chehab, on 3 October 2017 but the Deputy President of the Tribunal subsequently granted Mr Chehab permission to appeal on one of his four grounds of appeal on 17 January 2018.

3. In paragraph 3.4 of its decision the FTT said:

“Of Mr Ryan’s [for the tenant] 13 comparables, 6 are also used by Ms Ireland [for the landlord]. We consider therefore that these 6 provide the best starting point for our analysis...”

4. The Deputy President said that:

“The FTT disregarded seven of the comparables relied on by the applicant’s expert witness, four of which are said to have been in the same blocks as those on which the FTT relied, the remainder being in similar blocks. The sole reason given by the FTT for focussing only on the other six comparables was that those were the comparables relied on by both experts. If, as the applicant complains, the six selected comparables were those suggesting the highest value, it is arguable that the FTT’s approach was wrong in principle since it may have left out of account relevant evidence for no reason other than that it was not relied on by both valuers. If there was some other reason for disregarding the remaining comparables the FTT did not say what it was. It is therefore appropriate to grant permission to appeal on the applicant’s challenge to paragraph 3.4 of the FTT’s decision.”

5. On 1 March 2018 the Tribunal directed that the appeal would be a rehearing of the application to determine a rent, limited to the issue of the prevailing level of rent suggested by comparable lettings.

6. Mr Kevin Ryan FRICS, a partner of Carter Jonas LLP, appeared on behalf of Mr Chehab and also gave expert valuation evidence.

7. Mr Toby Boncey of counsel appeared on behalf of the landlord, Cadogan Estates Limited, and called Ms Victoria Ireland BSc, MSc, MRICS, a partner of Cluttons LLP, as an expert valuation witness.

8. I made an accompanied inspection of the appeal property on 6 August 2018 at which time I also viewed the exterior of the blocks of flats in which the comparable properties relied on by the experts were located.

Facts

9. Bourne House is located at the northern end of Sloane Street at its junction with Harriet Street. It is approximately 200 yards south of Knightsbridge underground station and the same distance east of Harrods department store. It is a mixed-use building with retail premises on the ground floor and a total of eight flats on the first to fourth floors. Flat 5 is located on the third floor and is served by a lift from the entrance lobby which is accessed from Harriet Street. There is a pedestrian crossing in Sloane Street directly opposite Bourne House. On the western side of Sloane Street is the Millennium Hotel. To the south of the Sloane Street retail frontage of Bourne House is a public house.

10. Flat 5 comprises an entrance hall, a reception room, a dining room, kitchen, four bedrooms and a bathroom. There is a small shower room between the kitchen and the bathroom which was formed from what was previously an external WC. The kitchen and bathroom fittings are out of date and the internal décor is tired. The flat is let unfurnished. There is a communal heating and hot water system. The cost of all services (heating, hot water, lift, cleaning of the common parts) is included in the rent. There is no porter or caretaker at Bourne House.

11. The gross internal area of Flat 5 has now been agreed at 1,257.5 ft² which is slightly higher than the figure adopted by the FTT (1,254 ft²). The reception room and three of the bedrooms face Sloane Street which is a noisy road throughout the day and night. The tenant has installed secondary glazing along this frontage.

12. Flat 5 was leased for a term of seven years and six months from 29 November 1985. Upon expiry of the lease it became an assured periodic tenancy. The tenancy was assigned to Mr Chehab on 6 August 1998 on the same terms.

13. The experts agree the details and rental adjustments of the six comparables upon which both rely. The factual details (but not the rental adjustments) of the seven additional comparables relied on by Mr Ryan and those of Flat 6, Bourne House, which is a new comparable introduced by Ms Ireland in this hearing, are also agreed.

14. Mr Ryan says the section 14 rent should be £29,300 pa while Ms Ireland says it should be £32,041 pa.

Statutory Provisions

15. Insofar as relevant to the present appeal section 14 of the Housing Act 1988 provides that the Tribunal shall determine the rent at which Flat 5 Bourne House might reasonably be expected to be let at the valuation date in the open market by a willing landlord under an assured tenancy which (in this case) is an assured periodic tenancy on the same terms (except as to rent) as those of the subject tenancy, but disregarding (a) any effect on the rent attributable to the granting of a tenancy to a sitting tenant; (b) any increase in the value of the flat attributable to a relevant improvement carried out by the tenant otherwise than in pursuance of an obligation to his immediate landlord; and (c) any reduction in value due to a failure by the tenant to comply with any terms of the tenancy. Under subsection (4) the rent does not include any service charge as defined under section 18 of the Landlord and Tenant Act 1985.

The valuation dispute

16. The dispute concerns whether Mr Ryan's additional seven comparables are relevant. Ms Ireland gave five reasons why they should be disregarded:

- (i) five of the comparables have only two bedrooms whereas the appeal property has four bedrooms;
- (ii) some of the comparables are either much larger or smaller than the subject flat;
- (iii) six of the comparables have the benefit of either a part-time or full-time caretaker or, in the case of 19 Knightsbridge Court, a 24-hour porter;
- (iv) in the case of Fordie House the residential entrance and common parts are shared with a doctors' surgery; and
- (v) 4 Shelton House was let twice: in February 2016 (Mr Ryan's additional transaction) and again in December 2016. Ms Ireland thought the later letting, which both experts relied upon, was to be preferred.

17. Mr Ryan rejected Ms Ireland's criticisms of his additional comparables:

- (i) Mr Ryan denied that 2-bedroom flats were not comparable to the subject property. He said there was not a material difference in size between the subject flat and his comparables. He did not accept that 3-bedroom flats always commanded higher rents than 2-bedroom flats of equivalent size since some people preferred larger rooms. Nor did he accept Ms Ireland's view that there was a "cap" on the value of 2-bedroom flats.
- (ii) Mr Ryan said the size range of 3-bedroom flats considered by Ms Ireland varied considerably and his additional comparables fitted into the overall size range that would be of interest to those looking to rent both 2 and 3-bedroom flats.

- (iii) It was possible to adjust for the presence of a 24-hour porter in the same way as the experts had agreed the adjustments for a part-time or full-time caretaker.
- (iv) The doctors' surgery in Fordie House was discreet and not advertised externally. It was not an NHS surgery and was open from 09:00 to 18:00 on Mondays to Fridays. The occupants of the building might consider such a facility to be an advantage. The public house adjoining Bourne House was more of a disadvantage than the doctors' surgery.
- (v) The fact there was a second, more recent, letting of 4 Shelton House did not render the previous letting irrelevant. There was no apparent change to the property in the intervening period and Ms Ireland accepted this flat was a good comparable. She relied on another comparable, 8 Marland House, which was let at the same time, February 2016, as the first transaction at 4 Shelton House. Mr Ryan described the rental market as "notably inefficient" and as being more volatile than the sales market. He therefore thought it appropriate to include both lettings of 4 Shelton House to give a more complete picture.

Rental adjustments

18. Apart from their difference in principle about the relevance of the additional comparables the experts also disagreed about the adjustments that were required to put them onto equivalent terms with the subject flat.

19. When analysing the first letting of 4 Shelton House in February 2016 Mr Ryan deducted 2% from the rent to reflect the presence at Shelton House of a part-time caretaker. When adjusting the December 2016 letting the experts agreed that a 1% deduction was appropriate. In the absence of any explanation for the change in the allowance, Mr Ryan accepted a 1% adjustment.

20. Mr Ryan did not distinguish between the value of a flat which had a second bathroom and one which had a bathroom and an additional cloakroom (i.e. a WC and hand basin). In each case he deducted 5% from the rental value of the comparable to allow for the subject flat having only one bathroom (the additional WC being disregarded as an improvement). Ms Ireland thought an additional bathroom would justify a 5% adjustment but that an additional cloakroom would only warrant a 2.5% deduction. Neither expert made any further adjustment where there were three bathrooms (or two bathrooms and a cloakroom). When this was pointed out by the Tribunal Mr Ryan said that a further adjustment should be made since the third bathroom/cloakroom added value. Ms Ireland did not think a further adjustment was justified.

21. Knightsbridge Court has a 24-hour porter and Mr Ryan said this was a more valuable service than either a part-time or full-time caretaker. He therefore deducted 5% from the rental value to reflect the absence of a porter or caretaker at Bourne House. Ms Ireland said her allowance of 1-2% for a caretaker was based on advice she had received from the head of Cluttons' residential lettings department that the absence of a caretaker was reflected in a longer

letting period rather than a lower rent. She had no evidence about the effect of a porter on the letting period and although she gave a figure of 4% as a rental allowance in her oral evidence she stressed that this was speculative.

22. Mr Ryan made no allowance for the ground floor doctors' surgery in Fordie House which he did not consider to be a security risk. He supported this view in oral evidence by reference to his work with the Howard de Walden Estate where he had direct experience of mixed medical/residential properties. He said that unless the medical use occupied several floors its presence would not detract from residential rental values. He referred to *82 Portland Place (Freehold) Limited v Howard de Walden Estates Limited* [2014] UKUT 0133 (LC) in which he gave evidence as an expert for the respondent and in which the presence of a medical suite (Unit I) had no effect on residential values. Ms Ireland considered sharing the access to Fordie House with the surgery was a security risk that would restrict the rent achievable. She distinguished the effect of this use from that of the public house adjoining Bourne House which was in a different road (Sloane Street) to the entrance to the flats (Harriet Street). Ms Ireland said the effect of the surgery would be to offset Mr Ryan's 5% adjustment for the views enjoyed by his two Fordie House comparables.

23. In answer to questions from the Tribunal, Ms Ireland said that the second letting of 4 Shelton House was better evidence of its value because it was closer to the valuation date. However, she said that if the earlier transaction were to be taken into account she would give it a relative weighting of 10% compared with the later letting.

24. The experts agreed comparable transactions should be adjusted for time using the Savills Prime London Residential Value Index; that the two flats at Fordie House (if taken into account) should be adjusted by 5% for the benefit of their views; and that a 35% deduction should be made in every case for "condition, tenure and obligations", i.e. for the relatively poor condition of the unimproved subject flat and for the fact that the comparable lettings were held under assured shorthold tenancies.

25. Ms Ireland obtained the rental value for the subject flat by averaging the adjusted rent per square foot per week of her six comparables (£0.49) and multiplying this by the agreed gross internal area of 1,257.5 ft². This gave £616.18 per week or £32,041 pa.

26. Mr Ryan relied upon 13 comparables (including the six adopted by Ms Ireland). He analysed the data in three ways. Firstly, he undertook the same exercise as Ms Ireland, i.e. he calculated the average rent per square foot per week (£0.46) and multiplied it by the agreed floor area to give a rent of £30,079 pa which he rounded to £30,000 pa. Secondly, he calculated the average weekly rent of the 13 comparables unadjusted for time (£990.38) and deducted the average total adjustment of 43% to give £564.52 per week or £29,355 pa, which he rounded to £29,250. Thirdly, he analysed a new comparable at 6 Bourne House (the same block as the subject flat) which Ms Ireland had identified (but did not rely upon) as one of several post-valuation date transactions (March 2018). The time-adjusted value per square foot was £0.74 per week which Mr Ryan further adjusted by 40% to allow for "condition, tenure and obligations"

(35%) and because the subject flat only had a single bathroom (5%). This gave £0.44 per ft² per week (£553.30 per week on the agreed area) or £28,772 pa which Mr Ryan rounded to £28,750 pa.

27. Mr Ryan took the average of these three figures to give an average rental value of £29,333 pa which he rounded to £29,300 pa.

Submissions

28. Mr Boncey submitted that in undertaking the dual role of advocate and expert, Mr Ryan had compromised the independence and validity of his evidence. For example, Mr Boncey said that Mr Ryan's third method of analysis (see paragraph 26 above) – which produced the lowest rental value based only on the single new comparable at 6 Bourne House – had been given disproportionate weight when averaged with the results of the other two methods, each of which was itself an average of 13 comparables. Mr Boncey submitted that such an approach amounted to advocacy for his client rather than an independent and objective approach to valuing the subject property.

29. Mr Boncey identified other passages in Mr Ryan's expert report which he said involved a mixture of opinion and submissions contrary to the RICS Practice Statement and Guidance Note "Surveyors Acting as Expert Witnesses" (4th edition). Because of this conflict Mr Boncey submitted that the Tribunal should give limited weight to Mr Ryan's evidence.

30. Mr Boncey said that the Court of Appeal had given clear guidance about the use of comparables in the recent decision of *Mundy v Sloane Stanley Estate Trustees* [2018] HLR 13 where Lewison LJ said at [28] – [29]:

"... property valuation usually proceeds by way of comparison with appropriate adjustments. If I may repeat something I have said before (*Marklands Ltd v Virgin Retail Ltd* [2003] EWHC 3428 (Ch); [2004] 2 EGLR 43 at [9]):

'Valuation essentially proceeds by analogy. The valuer looks for an analogue that is as close as possible to that which he has to value, and which has been the subject matter of a real transaction. He then works on the premise that if the subject matter of his valuation were to be the subject of a similar transaction, it would command the same value as the analogue. Since the analogue will never be identical to the subject matter of the valuation, the valuer will have to make adjustments to the value revealed by the analogue in order to reflect the differences between the analogue and the subject matter of his own valuation. In the case of a property valuation, the analogues are usually called 'comparables'. In a property valuation, typical adjustments will reflect differences between the comparables in location, terms of letting and so on.'

These adjustments are essentially a matter of valuation judgment. The fewer the differences there are between the comparable and the subject of the valuation, the greater the weight that can be given to the comparable.”

31. Mr Boncey submitted that Mr Ryan’s additional seven comparables and the post-valuation date sale of 6 Bourne House were not appropriate comparables and were not as analogous to the subject property as were Ms Ireland’s six comparables that Mr Ryan also relied upon. The additional comparables should be disregarded or not given any weight.

32. Mr Ryan denied that he had elided his roles as advocate and expert and explained that his expert report was a response to Ms Ireland’s report, as the Tribunal had directed. His views were unbiased and objective comments on the issues raised by Ms Ireland. He was fully aware of his duties as an expert to the Tribunal.

33. Ms Ireland had not analysed his seven additional comparables despite permission to appeal having been granted because the FTT disregarded them as either irrelevant or for other unspecified reasons. Ms Ireland just repeated her opinion that the additional comparables should be rejected and had only reluctantly identified specific adjustments that should be made.

34. Mr Ryan took the average of his three methods of analysis because he said the Tribunal liked averages and it was the simplest thing to do. Combining his analysis of Ms Ireland’s new (14th) comparable at 6 Bourne House with that of the other 13 transactions would make no difference to the result and Mr Ryan submitted that his evidence should be preferred.

Discussion

35. It is difficult and undesirable for the same person to act as both an advocate and an expert witness. The principal duties of each role are different. The RICS Practice Statement and Guidance Note: Surveyors Acting as Expert Witnesses states at PS 9.1¹ that a surveyor should only act in a dual role where:

“(a) Neither the Rules nor the customs of the particular tribunal prohibit you from so acting; and

(b) Other relevant factors make it appropriate (for example, the disproportionality of retaining two persons in separate roles) and where it is in the public interest to do so by providing access to justice which otherwise may not be available.”

36. The principal disadvantage of the dual role is said at GN 17.4(b) to be:

¹ Echoed in the RICS Professional Statement: Surveyors acting as Advocates, 2nd edition Professional Statement, 3rd edition Guidance Note, February 2017 at PS 3.9 and GN 3.

“The weight to be attached to the evidence given by you as an expert witness and to the submissions you make as surveyor-advocate, may be adversely affected if the dual role of surveyor-advocate and expert witness is undertaken.”

37. The Tribunal’s current rules and practice directions do not prohibit a person from acting in a dual capacity and that role is sometimes undertaken in simplified procedure cases where PS 9.1(b) above is a relevant factor. The present appeal was heard under the standard rather than the simplified procedure but the dispute is limited to a straightforward rental valuation and does not involve any issues of law. Mr Ryan acknowledged the desirability of having separate representation and in his closing submissions (but not his evidence) said that he had expected counsel to be appointed.

38. Mr Ryan was not instructed in either role on a contingency fee basis. He is an experienced expert who has regularly appeared before the Tribunal. I am satisfied that he tried to separate the roles of expert and advocate as best as he could but nevertheless was inevitable that at times his evidence strayed into advocacy. It is particularly difficult to undertake a dual role where, as here, the evidence being given is a response to the other party’s expert. As GN 17.8(c) states:

“You may find yourself at greater risk of slipping into ‘advocacy mode’ at the rebuttal stage of the presentation of evidence, when the focus of your evidence shifts from explanation of your own opinion to a more critical role in dealing with the expert witness report of your counterpart.”

39. Nevertheless, I think Mr Boncey over-stated the elision of Mr Ryan’s advocacy and expert evidence and I do not consider that there was a sufficient confusion of the dual roles to affect the weight I give to Mr Ryan’s evidence. Those occasions where his evidence was at risk of becoming impartial were easy to identify and I have taken this into account in my analysis of such evidence.

40. Turning to the additional comparables, I place no weight on the new comparable at 6 Bourne House introduced by Ms Ireland and relied upon by Mr Ryan because:

- (i) it was a post-valuation date transaction (March 2018);
- (ii) the property is not a flat but a maisonette located on the 3rd and 4th floors of Bourne House; and
- (iii) it is materially (43%) larger (1,802 ft²) than the subject property (1,257.5 ft²) or any of the other comparables (the largest of which is 1,535 ft²).

41. I accept Mr Boncey's criticism of Mr Ryan's use of this single comparable as part of an average of three with the results of his two other methods of analysis, both of which are based on the data from all 13 comparables. The effect of this is to lower (albeit marginally) the average rent. Had it been appropriate to place weight on this comparable it should have been included in the analysis of the other 13 comparables and not treated separately.

42. I also reject Mr Ryan's second method of analysis since this is an average of weekly rents which have not been time adjusted.

43. I place no weight on Mr Ryan's comparable at Flat 56 at 50 Sloane Street which at 736 ft sq is by some distance the smallest comparable flat and 41% smaller than the subject property.

44. In answering the criticism that the gross internal areas of his additional comparables were much larger or smaller than the subject flat Mr Ryan said that they "fit into the overall range". Even omitting the much smaller Flat 56 at 50 Sloane Street, four of the remaining six of Mr Ryan's additional comparables are outside (larger) than the range of the six agreed comparables. Mr Ryan's explanation that he was referring to the size range of properties that would be of interest to purchasers of 2 and 3-bedroom flats was unconvincing given the wording of his report on this point.

45. Of the remaining six additional comparables, four are 2-bedroom flats. Ms Ireland believes there is a ceiling to the level of rent the market will pay for a 2-bedroom flat and that a 3 or 4-bedroom flat of the same size and in the same building will achieve a higher overall weekly rent. This reduces the rental value per square foot of 2-bedroom flats compared with 3 or 4-bedroom flats. Consequently, she did not think it appropriate to use 2-bedroom comparables when valuing the 4-bedroom subject property. She illustrated this point by comparing the lettings of 6 Marland House (2 bedrooms, 1,137 ft², let for £1,100 per week in February 2016) and 8 Marland House (3 bedrooms, 1,020 ft², let for £1,150 per week in February 2016).

46. Ms Ireland also said the larger the flat the lower will be the rent per square foot. There was an exact inverse correlation between the size and rent per square foot of the six agreed comparables: the largest flat (4 Shelton House, 1,389 ft²) had the lowest rent per square foot at the valuation date (£0.67 per week) whereas the smallest flat (8 Marland House, 1,020 ft²) had the highest rent (£1.04 per week).

47. Mr Ryan said that some purchasers preferred larger rooms to more bedrooms; for instance, his two additional comparables at Flats 9 and 10 Fordie House both had double-sized (lateral) reception rooms rather than a third bedroom. And the two lowest rental values of his additional comparables as at the valuation date were the first letting of 4 Shelton House (£0.66 per ft² per week) and 19 Knightsbridge Court (£0.70 per ft² per week), both of which had three bedrooms. Nor could this be explained by these being the largest of the additional flats since both Fordie House flats were larger.

48. One of the six agreed comparables is probably a two-bedroom flat, i.e. 17 Grosvenor Court. The experts describe it as a 2/3-bedroom property but it seems likely that what is shown on the plan as a bedroom is the “large dual aspect reception room” referred to in the letting particulars.

49. I am not satisfied the evidence establishes the existence of a cap on the weekly rental value of 2-bedroom flats. The average weekly rent per square foot as at the valuation date (before other adjustments) is £0.80 for the five 2-bedroom flats and £0.79 for the seven 3-bedroom flats (ignoring 56 at 50 Sloane Street and 6 Bourne House). The maximum rent for a 2-bedroom comparable is £1,100 per week (9 and 10 Fordie House and 6 Marland House) and that of a 3-bedroom comparable is £1,150 per week (8 Marland House). The other six 3-bedroom comparables were all let for less than £1,100 per week regardless of size. It is difficult to isolate the effect of size from that of the number of bedrooms on rental value. There is also the further complication that several of the comparables have a third bathroom or cloakroom; a factor that Mr Ryan says is value significant but Ms Ireland says is not. In my opinion 2-bedroom comparables should not be excluded in principle from the analysis.

50. Ms Ireland said that Fordie House is not a good comparable because there is a doctors’ surgery on the ground floor. I do not consider that this detracts from the value of the property. It is a discreet private surgery which in my opinion does not lessen the security of the building for the residents which in any event has the benefit of a full-time caretaker.

51. Ms Ireland also says that 19 Knightsbridge Court is unsuitable as a comparable because it requires an adjustment for the presence of a porter. Mr Boncey submitted that any such adjustment would be speculative, but it is no more speculative than the adjustments that the experts make for the presence of a part-time or full-time caretaker. As Lewison LJ said in *Mundy*: “These adjustments are essentially a matter of valuation judgment.”

52. Ms Ireland said she made an adjustment for the absence of a caretaker at the subject property because her colleague had told her this would lengthen the marketing period, not that it would affect the rent payable. Ms Ireland said she had no such information about whether the lack of a porter would have the same or a greater effect. The figure of 4% which she gave in answer to questions from the Tribunal was, she said, speculative and unsupported.

53. Ms Ireland adjusted by 1% and 2% respectively those comparables which had a part-time and full-time caretaker. She did this notwithstanding her colleague had said their absence would not affect the rental value, only the marketing period. Ms Ireland said at paragraph 5.11 of her report that:

“The level of service provided by a porter is therefore greater than that of a live-in caretaker which, in turn, is greater than a part-time caretaker.”

The letting particulars submitted in evidence usually mentioned the presence of a porter or a caretaker and it is a desirable feature to have in a block of flats. Given the differentiation Ms Ireland makes between a part-time and full-time caretaker in terms of rental value it is consistent

to make a bigger allowance where there is a 24-hour porter. However, I believe Mr Ryan's 5% adjustment is too high and I would allow 3%.

54. Ms Ireland rejects the use of the first letting at 4 Shelton House as a comparable because it occurred ten months before the second letting and therefore considerably earlier than the valuation date. It is not suggested that there was any material change in the property between the two transactions and both Ms Ireland and Mr Ryan have adopted the flat as a suitable comparable. Ms Ireland relied on another comparable (8 Marland House) which was also let in February 2016 but she did not seek to reduce the weight given to that comparable on that account. To do so in respect of the earlier letting of 4 Shelton House is therefore inconsistent where that is the only material difference between the transactions. Neither expert weights the average rental by reference to each comparable's date of transaction (or at all). Otherwise the experts would give most weight to the letting of Flat 54 at 50 Sloane Street which took place in May 2017, the same month as the valuation date. The time adjusted value of the two Shelton House transactions is almost identical (£0.67 per ft² per week for the first letting and £0.66 per ft² per week for the second letting). The letting particulars for the two transactions give slightly different areas for 4 Shelton House: 1,389 ft² and 1,401 ft². If both lettings are analysed using the average of these areas (1,395 ft²) the time adjusted value becomes even closer. Under these circumstances I see no reason why the first letting of 4 Shelton House should not be afforded the same weight as the second letting. Neither expert suggests there is any material difference in the location of the comparables or the type and quality of the block in which they are situated and no adjustments are made, or weighting given, by them in this regard.

55. I do not accept that a flat with a bathroom and a separate cloakroom is as valuable as a flat with two bathrooms. The former is less convenient for overnight guests. I adopt an adjustment of 3.5% for the former compared with the subject property (which only has one bathroom) and 5% for the latter. Furthermore, I think a flat with three bathrooms, or two bathrooms and a separate cloakroom, is more valuable than one with two bathrooms and I would adjust such comparables by 6% compared to the subject property.

Determination

56. I attach my analysis of the 12 adopted comparables as Appendix 1.

57. The average rent of these comparables is £0.453 per ft² per week. Applying this to the agreed gross internal area of 1,257.5 ft² gives a value for the subject flat of £569.65 per week or £29,622 per annum, which I round to £29,600.

58. I therefore allow the appeal in part and determine the rent of Flat 5, Bourne House under section 14 of the 1988 Act at £29,600 per annum.

Dated 12 September 2018

A J Trott FRICS
Member

APPENDIX 1

Address	Beds	Floor	Rent achieved (£pw)	Floor area (sq ft)	Rent (£psf pw)	Month of letting	Savills Index at month of letting	Rent (£psf pw) at May-17 (Savills 101.4)	Deduct for lack of porter/ caretaker	Deduct for one bathroom	Deduct for condition, tenure & obligations	Deduct for views	Total adjustments	Adjusted rent (£psf pw)
54 at 50 Sloane Street	3	5	1,000	1,047 ¹	0.955	May -17	101.4	0.955	-2% ²	-5%	-35%	---	-42%	0.554
9 Fordie House	2	3	1,100	1,535	0.717	June -17	100.9	0.721	-2%	-5%	-35%	-5%	-47%	0.382
10 Fordie House	2	4	1,100	1,478	0.744	April -17	101.9	0.740	-2%	-5%	-35%	-5%	-47%	0.392
14 Grosvenor Court	3	3	1,000	1,216	0.822	Nov -16	104.4	0.798	-2%	-5%	-35%	---	-42%	0.463
17 Grosvenor Court	2	4	975	1,120	0.871	Jan -17	103.1	0.857	-2%	-5%	-35%	---	-42%	0.497
19 Knightsbridge Court	3	6	1,000	1,402	0.713	Jan -17	103.1	0.701	-3%	-6%	-35%	---	-44%	0.393
6 Marland House	2	3	1,100	1,137	0.967	Feb -16	110.1	0.891	-2%	-5%	-35%	---	-42%	0.517
8 Marland House	3	4	1,150	1,020	1.127	Feb -16	110.1	1.038	-2%	-6%	-35%	---	-43%	0.592
3 Shelton House	3	2	1,050	1,386	0.758	Aug -16	107.3	0.716	-1%	-6%	-35%	---	-42%	0.415
4 Shelton House	3	2	1,000	1,395 ³	0.717	Feb -16	110.1	0.660	-1%	-6%	-35%	---	-42%	0.383
4 Shelton House	3	2	950	1,395 ³	0.681	Dec -16	103.4	0.668	-1%	-6%	-35%	---	-42%	0.387
9 Shelton House	2	5	850	1,045	0.813	Aug -16	107.3	0.768	-1%	-3.5%	-35%	---	-39.5%	0.465

Average rent psf per week: £0.453
Rental value of 5 Bourne House (1,257.5 ft²): £569.65 pw
: £29,622 pa
say : £29,600 pa

¹ The area on the plan submitted in evidence is 1,076 ft², but both experts adopt 1,047 ft²

² The letting particulars for both flats 54 and 56 at 50 Sloane Street (different agents) refer to a porter not a caretaker but both experts adjust for a full-time caretaker

³ Floor area is taken as the average of the two areas given in the two sets of letting particulars