RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

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| Case Number: | CHI/43UB/0C9/2009/0006 |
| Property: | 6, Regnolruf Court, Church Street, Walton-on-Thames, Surrey, KT12 2QT |
| Application: | Section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 |
| BETWEEN: | |
| Applicant: | Metropolitan Properties Co (FGC) Limited |
| Respondent: | Ross Warwick Windridge |
| Date of Application: | 26th August 2009 (erroneously dated 2008) |
| Date of Hearing: | 7th December 2009 |
| Appearances for the Applicants: | Wallace LLP Solicitors (not in attendance at the hearing) |
| Appearance for the Respondents: | Edmund Middlehurst of Gregsons Solicitors |
| Members of the Leasehold Valuation Tribunal: | Mr H.D. Lederman (Lawyer/Chairman)<br>Mr D.L. Edge FRICS (Valuer/Member) |
| Date of the Tribunal's Decision: | 8th February 2010 |

## THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL:

1. That the costs payable by the Respondent Ross Warwick Windridge to the Landlord Applicant for the first notice of claim are £358.50

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2. That the costs (disbursements) payable by the Respondent Ross Warwick Windridge to the Landlord Applicant for the second notice of claim are £6.00.

## REASONS FOR THE TRIBUNAL'S DECISION.

### Preliminaries and scope of decision

1. This is a decision of a Leasehold Valuation Tribunal of the Southern Rent Assessment Panel on an application dated 26th August 2009 made by the Applicant under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"). The Tribunal was asked to make an order as to the liability of Ross Windridge to pay costs incurred in relation to the grant of a new extended lease of leasehold property known as 6, Regnolruf Court, Church Street, Walton-on-Thames, Surrey, KT12 2QT ("the property"). The Tribunal is asked to assess legal costs, land registry fees and courier fees (excluding valuation fees) relating to a first notice served on or about 2nd July 2008 and land registry fees and courier fees relating to a second notice served on or about 1st September 2008. Both notices were served on behalf of the Respondent.

### The parties to these proceedings

2. The Applicant was represented in correspondence by Wallace LLP solicitors. Neither Wallace LLP nor any representative of the Applicant attended the hearing on 7th December 2009. Samantha Jane Bone of Wallace LLP prepared detailed written submissions on costs in a document dated November 2009. Edmund Middlehurst and Mrs Anne Daniels of Gregsons solicitors represented the Respondent at that hearing and in correspondence.

### Relevant background

3. The following facts were common ground or not challenged by the Respondent. Most of the facts were supported by documents in the bundle prepared for hearing by the Applicant's solicitors. The Respondent held a long lease of 99 years from 29th September 1975 of "the property".

4. On or about 2nd July 2008, the Respondent served a notice of claim under the 1993 Act seeking a new extended lease of the property ("the first notice"). The first notice was expressed to be under section 42 of the 1993 Act. That notice was met with a counter notice from the Applicant dated 21st August 2008 which denied the right to acquire a new lease under part II of the 1993 Act on the ground that at the date of service of the first notice, he had not been the registered proprietor of the property for 2 years, as required by section 39(2) of the 1993 Act. It was accepted at the hearing that the Respondent did not become the registered proprietor of the property until about 20th August 2006. He had completed the purchase earlier in 2006 but there was a delay in registration of his title.

5. By letter of 1st September 2008 Gregsons, the Respondent's solicitors accepted that the first notice was not a valid notice under section 42 of the 1993 Act, as the Respondent had not been the registered proprietor for a 2 year period at the date of service. Gregsons served on the Applicant a further notice dated 1st September 2008 ("the second notice"). Gregsons asserted that the first notice was not "in force" and did not need to be withdrawn.

6. On 11th September 2008 (by letter) the Applicant's solicitors disagreed with Gregsons' interpretation of events, sought a deposit and required the Respondent to deduce title under the relevant provisions of the 1993 Act. That request was expressed to be without acknowledgement of the validity of the second notice. A breakdown of costs claiming a total of £1216.98 inclusive of VAT was claimed under cover of that letter. On 22nd September 2008 under cover of a letter of the same date the Applicant's solicitors supplied a revised breakdown of costs under the first notice seeking £1238.13 inclusive of VAT (page 121 of the hearing bundle).

7. The Respondent continued to dispute liability for the Respondent's costs arising out of the first notice and placed reliance upon the decision in *Sinclair Gardens Investments (Kensington) Ltd v Poets Chase Freehold Company Ltd* [2007] EWHC 1776 (Ch) (26 July 2007) ("*Poets Chase*"). The parties continued to debate the Applicant's entitlement to its costs under section 60 of the 1993 Act in correspondence.

8. On 30th October 2008 the Applicant served a counter notice admitting entitlement to a new lease by reference to the second notice but put forward proposals as to premium and the terms and conditions of the new lease.

9. On 3rd February 2009 the Respondent applied to the Tribunal seeking an order determining the terms of acquisition of the new Lease. The terms of that application were not in evidence. On or about 30th April 2009 the terms of acquisition were agreed.

10. Following further correspondence between the parties the Applicant served a further breakdown of costs for the second notice under section 42 of the 1993 Act prepared on 31st May 2009 claiming a total of £2529.37 inclusive of VAT

**Section 60 of the 1993 Act**

11. Section 60 of the 1993 Act provides that:

"(1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely—

(a) any investigation reasonably undertaken of the tenant's right to a new lease;

(b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;

(c) the grant of a new lease under that section;

but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

(3) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation 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."

**Procedure**

12. On 2nd December 2009 Wallace LLP wrote to the Tribunal on behalf of the Applicant submitting that the issues between the parties were capable "of being determined by the Tribunal on paper". Wallace LLP asked for the hearing listed for 7th December 2009 to be vacated on that ground. Wallace LLP had previously insisted upon an oral hearing in their letter to the Tribunal of 7th September 2009. The Tribunal treated the letter of 2nd December 2009 as a request to adjourn the hearing. No good ground was given for adjourning the hearing at that late stage in that letter. No reasons were put forward why the Applicant would suffer prejudice

if the hearing proceeded. The request for the adjournment of the hearing was refused.

13. On 3rd December 2009 the Tribunal wrote (by facsimile transmission and by post) to the parties and mentioned that it might have regard to following decisions and materials at the hearing:

A. Passages on costs from Hague Leasehold Enfranchisement (Fifth edition)
B. Plintal SA v Edgwood LRX/16/2007 (LT)
C. Davies v Gates and others 2 Barrington Court CHI/00HN/OLR/2005/0012
D. Lownds Home Office [2002 1 WLR 2450
E. Mattel v RSW [2004] EWHC 1610
F. Huff v Sloane Estate Ref LON/NL/117

Copies of those decisions and materials were enclosed with that letter. No further submissions were received from Wallace LLP or the Applicant about that issue before or after the hearing.

**Liability**

14. The principal point relied upon by Gregsons for the Respondent on the issue of liability for costs (as opposed to amount) was that as the first notice did not comply with section 39(2)(a) of the 1993 Act, it was not a notice to which the provisions of section 60(1) and section 60(3) of the 1993 Act applied. Accordingly, so the argument was put, no liability for costs arose in respect of the costs incurred by the Respondent in relation to the first notice. More specifically, Mr Middlehurst on behalf of the Respondent, argued that for a notice to fall within section 60 of the 1993 Act it had to be a notice served under section 42 of the 1993 Act. A notice of claim could only be made by a qualifying tenant: see section 42(1) of the 1993 Act. Accordingly since the Respondent was not a qualifying tenant entitled to bring a notice because of section 39 of the 1993 Act, the right to costs incurred in relation to the first notice did not arise.

15. Mr Middleshurst cited a passage from Hague on Leasehold Enfranchisement at paragraph 29-04 concerning the ownership condition (as it is described ) in section 39 in support of this contention.

16. Mr Middleshurst also argued that the *Poets Chase* decision supported his contention. That decision concerned the provision in the 1993 Act relating to collective enfranchisement. There are nevertheless considerable similarities with the statutory regime concerning claim to extension of individual leases. In particular Mr Justice Morgan held that an initial notice under section 13 which did

not comply with mandatory requirements of section 13(3) of the 1993 Act was not a valid notice, did not continue "in force" for the purpose of section 13(8) of the 1993 Act (preventing a further notice being served) and did not have to be withdrawn for the purpose of section 28 of the 1993 Act: paragraph 61 of the *Poets Chase* decision.

17. It is to be noted that the *Poets Chase* decision did not consider the effect of a notice which did not comply with the mandatory requirements of section 13(3) upon the provision for payment of the reversioner's costs of the collective enfranchisement process under section 33 of the 1993 Act. Section 33 is the provision in the 1993 Act which performs a similar but not identical function to section 60 in the context of the individual lease extension.

18. Accordingly although the *Poets Chase* decision is of great interest and of considerable persuasive force, it is not binding upon this Tribunal, as it did not consider the issue before the Tribunal.

19. On this point the Applicant referred the Tribunal to a decision of a Leasehold Valuation Tribunal regarding 117-132 Oakwood Court (Ref LON/ENF/259/98) (24th March 2008). That decision concerned an application for costs under section 33 of the 1993 Act. That Tribunal's decision also arose out of a consent order where it had been agreed that some section 13 notices were "void and of no effect". Although some of the Tribunal's comments in that case are of interest, that decision is not binding on this Tribunal and was made in very different circumstances. It is of little assistance in resolving the issue before this Tribunal.

20. The Applicant also referred the Tribunal to a decision of a Leasehold Valuation Tribunal concerning 10a Queensbury Station Parade (Ref LON/OOAR/OC9/2009/0033) on 11th July 2009. Those were proceedings seeking assessment of costs under section 60 of the 1993 Act brought by a landlord which appears to have been the same as the Applicant in these proceedings. The Applicant in those proceedings was represented by Ms Bone of Wallace LLP. In that case the Respondent tenant had served a first and a second notice under section 42 of the 1993 Act for an extended lease, both of which notices were assumed to be invalid, for failure to comply with provisions in section 42 of the 1993 Act. In consequence the Respondent tenant argued that no costs were payable, relying partly on the *Poets Chase* decision. In that case the Tribunal held that a landlord was entitled to its reasonable costs under section 60 even if the notices of claim are found to be invalid.

21. The 10a Queensbury Station Parade decision is of great interest, addresses the same statutory provisions and, on the facts, is closer to the facts of this case. That Tribunal decision is not however binding on this Tribunal. The basis for the "invalidity" of the notices of claim in that case is different from the ground for invalidity relied upon by the Respondent.

22. Accordingly the Tribunal considers afresh the question whether costs are payable under section 60 of the 1993 Act in circumstances where the parties have agreed that a notice of claim purportedly served under section 42 of the 1993 Act was invalid. In essence this requires the Tribunal to interpret section 60 against the statutory scheme.

23. The first point to be made is that the Respondent was a qualifying tenant at the time of service of the first notice within section 5 of the 1993 Act. He held under a long lease which was not from an excluded body or for an excluded purpose. The effect of section 39(2)(a) of the 1993 Act is that he did not satisfy an ownership condition which enabled him to exercise the right to acquire a new lease of the property at the time of the first notice.

24. The Tribunal finds the question whether or not a notice purportedly served under section 42 of the 1993 Act remains "in force" of little assistance in resolving this question. The phrase "in force" appears in section 42(8) of the 1993 Act. That subsection gives no indication as to how the question of validity of a notice under section 60 of the 1993 Act is to be approached. Nor is it implicit from that sub-section how the question of a failure of a tenant to satisfy the ownership condition in section 39 is to be approached.

25. The comments made by Mr Justice Morgan in *Poets Chase* (at paragraph 55) concerning provisions in Chapter I of Part I of the 1993 Act which give some statutory effect to what is otherwise an invalid notice do not appear to be of relevance here. This is not a case where the first notice was defective as a matter of form or for failure to comply with section 42 in some respect. Accordingly this is not a case where it can be concluded that the normal result is that a notice which does not comply with a mandatory statutory requirement as to its contents is an ineffective notice.

26. The purpose of section 60 of the 1993 Act is to provide a landlord with a right to recover his reasonable costs of the kind identified in section 60(1) of the 1993 Act where he has been served with what appears to be a notice under section 42 of the 1993 Act. Other provisions such as sections 45 and 46 of the 1993 Act clearly contemplate that a landlord might seek to contest the validity of the tenant's notice. In the Tribunal's view the opening words of section 42 are sufficiently wide to mean that, where a notice is given under section 42 of the 1993 Act, costs are payable, even if it is later found or agreed that a particular notice of claim was invalid. Had it been the intention that a distinction was to be drawn between notices which were invalid and notices which failed to satisfy mandatory conditions, or between notices which were potentially invalid and those which were of no effect from the outset, section 60 or other provisions could have provided for different outcomes. Section 60(4) of the 1993 Act makes provision for circumstances in which a tenant who makes a claim which is successfully opposed will not become liable for the landlord's costs.

27. Accordingly the Tribunal concludes that under section 60 the Respondent remains liable for the Applicant's costs incurred in respect of the first notice even though the ownership condition may not have been satisfied.

28. The authors of Hague (op cit) address this issue in a slightly different way. They express the view that a tenant who serves what turns out to be an invalid notice of claim is estopped from denying liability to pay section 60 costs at any time when he asserts the notice is valid: see paragraphs 32-18 28-22 (op cit) and *Plintal SA v Edgwood* LRX/16/2007 (LT). *Plintal* was a Lands Tribunal decision on the right to manage provisions of the Commonhold and Leasehold Reform Act 2002 which contain similar provisions as to costs to those in section 33 and 60 of the 1993 Act. The facts of *Plintal* were central to the finding of estoppel in that case. The Applicant here does not rely upon *Plintal* nor does it assert an estoppel or the principle that the Respondent cannot approbate and reprobate. Accordingly the Tribunal does not adopt this route to its conclusion.

29. The Tribunal turns to consider the separate question raised by the Respondent, whether the *Applicant* is estopped from asserting that the first notice was a notice under section 42 of the 1993 Act for the purposes of recovery of costs under section 60 of the 1993 Act. At the hearing Mr Middlehurst agreed there were 3 elements to be established to make out an estoppel of the kind which appeared to be asserted here (promissory estoppel or estoppel by representation): (a) a representation or statement as to intention by or on behalf of the Applicant, (b) reliance by the Respondent or his representative, and (c) change of position by the Respondent or his representative or detriment suffered. This argument was not foreshadowed in the Points of Dispute dated 15th October 2009 filed on behalf of the Respondent or in the correspondence.

30. The Tribunal found some difficulty in identifying the representation made by the Applicant relied upon by the Respondent. Mr Middlehurst referred to a letter from Wallace LLP sent to the Respondent on 17th July 2008. Mr Middlehurst submitted (although this was not in the hearing bundle) that he replied on 18th July 2008. He emphasised the fact that he had sent office copies of the title of the lease of the property to the Respondent and these would have been received by Wallace LLP on 19th July 2008. It is evident from the schedule of costs that the Applicant instructed their valuer. Mr Middlehurst's evidence was that the Applicant's valuer, Robin Sharp, contacted Gregsons by telephone on 21st July 2008 to make an appointment to inspect the property. Mr Middlehurst said that Gregsons sent the deposit to the Respondent for the first notice on 23rd July 2008. None of these facts were contained in a witness statement or evidenced by attendance notes or other records put in evidence before the Tribunal.

31. It is evident from Gregsons' letter of 17th September 2008 that that the deposit for the first notice was sent to Wallace LLP at some point before August 2008.

32. Mr Middlehurst agreed that the effect of any representation which may have been made by the Respondent must have come to an end by the date of the letter from Gregsons of 1st September 2008, when the Respondent accepted the point about the invalidity of the first notice. In fact the Tribunal considers the position was made clear when the Applicant took the point about invalidity of the notice in the letter from Wallace LLP of 1st August 2008. What the Respondent's argument appeared to be was that by requesting a deposit and failing to take issue with the validity of the first notice from the date when the official copy entries were received on 19th July 2008 until 21st August 2008, the Applicant represented that it would not take the point that the first notice was invalid or did not give rise to a right to an extended lease. This argument was illustrated by reference to the schedule of costs produced by the Applicant, showing that between the date of service of the first notice and 21st August 2008, Wallace LLP on behalf of the Applicant undertook work before communicating the decision to take the point to the Respondent.

33. One difficulty the Respondent faces in this argument is that the Tribunal has not seen any written or documentary evidence or confirmation of such a representation. Nor is there is documentary evidence that such a representation was relied upon. None of the contemporaneous correspondence in evidence before the Tribunal refers to such an understanding. Both sides were represented by solicitors. Some documentary reference to such a representation would have been expected.

34. Another difficulty on the issue of reliance is that (as Mr Middlehurst frankly conceded in the course of argument) his firm only appreciated that the Respondent had not satisfied the ownership condition when Wallace LLP took the point in its counter notice on 21st August 2008, and until then Gregsons was not aware of the issue. It is difficult to understand how Gregsons or the Respondent, who was dependent upon the advice of his solicitors, could have relied upon such a representation if neither of them were aware of the potential problem.

35. The Tribunal is wholly unpersuaded that anything said or done (or not said or not done) by the Applicant or its solicitors from the date of service of the first notice on or about 2nd July 2008 amounted to a sufficiently clear or unequivocal representation or statement that the Applicant accepted the validity of the first notice, or would not object to the validity of the first notice, or to the exercise of the right under the first notice. The Tribunal has not had the benefit of seeing any correspondence or other communication which might have been relevant to such a contention in this period. In the absence of any communication in writing or other evidence the Tribunal is unable to find any representation was made.

36. There is also no persuasive evidence before the Tribunal that such a representation was relied upon by the Respondent, who was represented by solicitors during this time, or that the Respondent changed his position in response to such a representation.

37. Reference was made to *Plintal* which was said to support the Respondent's argument about estoppel. The facts of *Plintal* were very different. The Applicant for an order for the right to manage had taken the Leasehold Valuation Tribunal proceedings to an advanced stage before seeking to contend that its initial claim notice was not valid. The Tribunal finds that decision of no assistance to the question as to whether there was any estoppel on the facts here.

38. The Tribunal concludes that the Respondent has failed to establish any estoppel which prevents the Applicant from asserting its claim to costs in relation to the first notice under section 60 of the 1993 Act.

**Assessment of costs under section 60 of the 1993 Act**

39. By reference to the Schedules of Costs prepared by the Respondent landlord, the Tribunal finds the following costs to have been reasonably incurred and are payable by the Respondent tenant.

**The first notice- amounts allowed**

40. The Tribunal considers these costs by reference to the breakdown dated 18 09 2008 at page 33 of the Hearing Bundle ("the Schedule") which superseded the breakdown at page 121 of the hearing bundle: see paragraph 24 of the submissions of Ms Bone of Wallace LLP. The amounts which the Tribunal considers to have been reasonable within section 60 of the 1993 Act for this notice are stated below:

| Date | Work | Time allowed (hours) | Amount allowed £ |
|---|---|---|---|
| 16 07 2008 | Considering notice of claim | 0.2 | |
| 17 07 2008 | Letter to client, valuer and lessee | 0.3 | |
| 21 07 2008 | Considering office copy entries | 0.2 | |
| 21 07 2008 | Call to valuer | 0.1 | |
| 21 07 2008 | Call to client | 0.1 | |
| 23 07 2008 | Letter to lessee's solicitors | 0.0 | |
| 28 07 2008 | Letter to valuer | 0.0 | |
| 30 07 2008 | Letter to valuer | 0.0 | |
| 18 08 2008 | Counter notice | 0.0 | |
| 19 08 2008 | Obtaining Office copy entries | 0.0 | |
| 19 08 2008 | Call to client | 0.0 | |
| 21 08 2008 | Letter to lessee letter to client and letter to valuer | 0.0 | |
| | | 0.9 but say 1 hour | 300.00 |
| | VAT | | 52.50 |
| | Land registry fees | | 6.00 |
| | Courier | | 0.00 |
| | | | 358.50 |

41. The Tribunal's directions invited production of a client care letter, among other things. The Tribunal was not provided with any client care letter or any other documents or vouchers upon which the claim to costs was based. It was said that "the Applicant is a longstanding client of our firm and accordingly no client care letter is available" in Wallace LLP's letter of 22nd September 2009. No further explanation of this was given by Wallace LLP. Mr Middlehurst produced a document entitled "tribunal breakdown" which he said had been provided by Wallace LLP. A copy of this had been sent to the Tribunal earlier. This provided some additional information but not much more than that in the schedule prepared by Wallace LLP.

42. Hourly rate. The amount claimed is £300 per hour rising to £325 per hour from 18th August 2008. The Tribunal accepts this may be the hourly rate payable between solicitor and client for leasehold enfranchisement work for a partner in a firm in central London. However, this hourly rate for a partner implies someone of considerable experience and expertise in the field. The Tribunal finds that a landlord (or other client) would reasonably expect a solicitor with that level of experience and expertise to have carried out many of the items of work carried out in relation to the first notice more quickly than the times claimed in the schedule. The Tribunal also cannot ignore the value of the premium for the extended lease of the property, as it was put in the initial notice namely £15,350. A slightly higher premium of £16,000 was ultimately agreed: see the letter from Wallace LLP of 30th April 2009. This was a modest claim for a premium on any view. In relation to this first notice, it would have been apparent at a very early stage that as soon as the office copy entries were obtained (perhaps as early as 19th July 2008) that there appeared to be a complete answer or defence to the Respondent's claim to acquire an extended lease as the ownership condition not been satisfied. In those circumstances, had the Applicant been personally liable for the sums claimed as costs, the Tribunal finds the Applicant as the client would reasonably have expected the charges to have been significantly lower, particularly in the context of the premium at stake.

43. The Tribunal is handicapped in assessing costs because the Respondent, through Wallace LLP, elected not to produce copies of the letters or e-mails relied upon, even with a reservation of privilege that often accompanies an assessment of costs. Wallace LLP also omitted to produce any contemporaneous records of time spent, as many solicitors at this kind of charge out rate might have. Such records were required by the directions made on 17th September 2009. As a number of different breakdowns were produced to support the claims for costs in respect of the first notice, the Tribunal does not regard this as a mere formality. The Applicant's written submissions were signed by Samantha Bone, but there was no statement of truth, nor was there certificate similar to the kind which accompanies a bill of costs or a schedule of costs for summary assessment in civil proceedings which would

give the Tribunal confidence that the Applicant is actually liable or had agreed to become liable for the costs alleged to have been incurred.

44. Paragraph 25 of the Samantha Bone's submissions gives evidence of a longstanding relationship between Wallace LLP and the Applicant and other companies within the Freshwater group of companies. The absence of a client care letter makes it difficult to assess the extent to which the Applicant would reasonably expect Wallace LLP to carry out work for which Wallace LLP would charge at these hourly rates. The Tribunal notes that Samantha Bone's submissions omitted to address this point. The Tribunal cannot ignore the fact that the Freshwater Group is a large and well known landlord which would be expected to have some knowledge of enfranchisement matters. This was one way of reading Samantha Bone's submissions to the Tribunal in 10a Queensbury Station Parade (Ref LON/OOAR/OC9/2009/0033 (paragraph 12 of the decision).

45. Against that background the Tribunal is not satisfied that 0.8 of an hour would be a reasonable cost of investigation of this claim at the outset on 16th July 2008. No details of the steps taken to consider the notice of claim are given. Given the experience of the client, the paucity of the information and documentation available at that stage, and the absence of a copy of a bill to the Applicant evidencing the client's liability, the Tribunal is unwilling to speculate what work might have been done. Doing the best it can on the evidence available the Tribunal has substituted its view of what a client might reasonably expect to pay for work at that stage at 0.2 hours.

46. In relation to communications with the valuer the Tribunal has not been asked to assess the Applicant's valuer's fees. It has not been suggested by the Applicant explicitly which if any of the communications with the valuer in relation to the first notice were incidental to giving instructions to the valuer and which were simply keeping the valuer up to date with general strategy or other matters falling outside the scope of section 60(1) of the 1993 Act.

47. The Tribunal finds that by 21st July 2008 the Applicant and Wallace LLP knew that they had what could be regarded as a strong defence or response to the Respondent's claim to acquire an extended lease under the first notice under the provisions of the 1993 Act. By that date the Respondent's solicitors Wallace LLP had copies of the office copy entries of the lease of the property showing the date upon which the Respondent had become the registered proprietor. It is unclear if this is the effect of what is said in paragraph 29(xviii) of the submissions from Samantha Bone. The Tribunal finds that Wallace LLP's request for up to date office copy entries would have taken no more than 5 days to arrive. There was a remote possibility that there might have been a good answer to the Respondent's failure to satisfy section 39 of the 1993 Act. For reasons which are unexplained the Applicant and Wallace LLP decided not to draw the ownership condition point to the attention of the Respondent until the 21st August 2008. Had an experienced client (or the Applicant) been informed of the position and asked to bear the

additional costs from 21st July 2008, the Tribunal is unable to see why the Applicant would reasonably expect to bear those costs. Those costs could have been minimised by a simple letter to Gregsons asking them if they had some answer to the point. In the event Gregsons had no answer and served the second notice shortly after becoming aware of the problem with the first notice. In the absence of an explanation of why these costs were incurred after receipt of the office copy entries, the Tribunal is not satisfied that the costs incurred after 21st July 2008 were reasonable or would have been reasonably expected to have been incurred if the Applicant was personally liable for those costs.

48. For similar reasons the Tribunal is quite unpersuaded that a client would reasonably expect to pay an assistant solicitor 0.2 of an hour at £225.00 per hour plus VAT to obtain office copy entries on or about 19th August 2008. The Tribunal cannot understand why an experienced client would reasonably expect to pay a qualified solicitor to undertake this work, even if the office copy entries were reasonably required at this stage (as to which the Tribunal is far from satisfied). It is not for the Tribunal to speculate about this. It suffices to say that the Applicant has not persuaded the Tribunal that these were reasonable costs or would reasonably have been expected to have been incurred by the Respondent if they were to be paid by the Respondent personally.

49. Equally the Applicant has not persuaded the Tribunal that the costs incurred on 21st August 2008 were reasonable costs or would reasonably have been expected to have been incurred by the Applicant if they were to be paid by the Applicant personally. By that stage it was crystal clear the section 39 point was very strong.

50. The Tribunal does not accept that the cost of "preparing" the Counter Notice on 18th August 2008 forms part of the costs which are recoverable under section 60(1) of the 1993 Act. On the facts of this case such a Counter Notice is not part of the investigation of the tenant's right to a new lease within section 60(1)(a) of the 1993 Act or any other part of section 60. A similar conclusion was reached by the Leasehold Valuation tribunal in Davies v Gates and others 2 Barrington Court (CHI/00HN/OLR/2005/0012) where the point was argued in more depth.

51. A client would not reasonably expect to pay for courier fees when the counter notice could have been sent by document exchange or post. Equally official copy entries costing £20.00 are expensive substitutes for internet copies. Many solicitors operating at this level will have an account with the land registry. Wallace LLP has declined to provide the detail of how these costs were incurred or produce any vouchers as the Tribunal's directions made on 17th September 2009 required. The justification given for courier fees is the serious consequence of non-service of a counter notice (the *Cadogan v Morris* point). This begs the question why service of the Counter Notice was left to the last two weeks or why, if post or DX is used but fails, a further copy is not sent. This point was put to Wallace LLP in a similar form in Gregsons' letter of 19th August 2009 but remains unsanswered.

**The second notice- amounts allowed**

52. The only sums in issue are the courier fees and the Land Registry fees. The second notice was served on 1st September 2008. The Applicant had only obtained office copy entries on 19th August 2008 according to the breakdown of costs provide for the first notice. The Tribunal concludes that only internet copies for an estimated cost of £6.00 would be reasonable. For the same reasons as in relation to the first notice the Tribunal is not satisfied the courier fees would have been reasonably incurred or reasonably have been expected to have been paid by the Applicant to its solicitors.

H Lederman
Legal Chairman
8th February 2010