

2456.



**HM Courts
& Tribunals
Service**

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Case number CAM/12UE/OLR/2011/0097 (1)
CAM/12UE/OLR/2011/0098 (2)

Property 3, 7 and 21 Elm Road, Folksworth,
Peterborough PE7 3SX (1).
7 Chichester Way, West Perry,
Cambridgeshire PE28 0DR (2).

Applicant Mrs P Wainwright (No 3)
Mr A Morley (No 7)
Mrs A Goosey (No 21)
Mr M Curran (7 Chichester)

Represented by Mr M Hafiaz of Leeds Day solicitors

Respondent Freehold Securities Ltd and Dove Court
Management Folksworth Ltd (1) and
Freehold Securities Ltd and Chichester
Court (Grafham) Ltd (2).

Represented by Mr G Stevenson of Stevenson's
solicitors

Type of Application to determine the costs payable on lease
extension (Section 60 of the Leasehold
Reform and Urban Development Act
1993) (the 1993 Act)

Date of Application 9th November 2011

Tribunal Mr R Brown FRICS Chairman
Mr G Jones MA LLM (Cantab)
Mr R Humphrys FRICS

Decision

1. The reasonable legal costs of the Respondent in dealing with the matters set out in Section 60 of the 1993 Act are in respect of
3 Elm Road **£663.75** and the disbursements of **£9.23**
7 Elm Road **£663.75** and the disbursements of **£17.45**
21 Elm Road **£650.48** and the disbursements of **£21.23**
21 Chichester Court **£867.30** and the disbursements of **£29.45**
All plus VAT if applicable.

Reasons

2. The Applicants are the lessees of the properties described above under long leases and have applied to the Respondent for the surrender of the Applicant's existing lease and the granting of further long leases pursuant to Section 48 of the 1993 Act.

Introduction

3. Agreement has been reached on all matters including the valuation fees and the only matter outstanding is the legal costs to be paid by the Applicant pursuant to Section 60(1) of the 1993 Act.
4. Directions were issued on 17th November 2011.

The Law

5. When lessees use the enfranchisement provisions, they become liable under section 60(1) of the 1993 Act to pay the landlord's "*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"
6. Under section 60 of the 1993 Act the method of assessment of the fees to be allowed by the Tribunal are those which would be payable by the client "*if the circumstances had been such that he was personally liable for all such costs*".
7. If the Respondent is registered for VAT purposes, it will be able to recover the VAT on those fees because those services will have been supplied to the Respondent, not the Applicants.

Hearing

8. The hearing was held at the Cambridge offices of the Residential Property Tribunal Service on 27th February 2011.
9. The Parties had prepared and agreed trial bundle in accordance with Directions.

Issues

10. There appears to be no dispute between the parties about the Respondents entitlement to legal costs.

Valuation Costs

11. Valuation costs are agreed subject to VAT.

VAT

12. The Parties are agreed that 1/3rd of the total of each invoice will be subject to VAT. The reason for this agreement is that only one of the Respondents is registered for VAT.

Charging rates

13. Mr Hafiaz for the Applicant says the charging rate should be £150.00 per hour.
14. Mr Stevenson says the work was carried out by Louise Haynes who is a Grade B Fee earner for whom the guideline rate is £177.00. Ms Haynes is in fact charged out at £185.00 per hour on account of the specialist nature of this type of work.
15. When questioned, Mr Stevenson agreed that a specialist would be expected to be quicker but would be more likely to spot matters others would not.
16. It is not in dispute that the time recording of 10 units per hour (6 minute each) is that typically used for this type of work.

Time

17. For ease of reference the Tribunal reproduces Mr Stevenson's schedule of costs combined into one table.

Item	3 Elm	7 Elm	21 Elm	7 Chichester
<i>Time Spent (minutes)</i>				
Notice and Counter Notice	90	90	90	90
Notice of Deposit	12	12	12	12
Notice of Default	12	12	12	12
Prepare lease	60	60	60	60
Consider amendments	30	30	30	30
Valuers instructions	30	30	30	30
<i>Time to be spent</i>				
Finalise lease and complete	60	60	60	60
<i>Letters sent</i>				
Leeds Day	36	36	30	30
Clients	60	60	60	60
Valuer	30	30	30	30
<i>Letters to be sent</i>				
Lease outstanding matters	<u>60</u>	<u>60</u>	<u>60</u>	<u>60</u>
Total hours	8.00	8.00	7.90	7.90
at £185	£1,480.00	£1,480.00	£1,461.50	£1,461.50
<i>Disbursements</i>				
OCE's and Plans	£8.00	£12.00	£20.00	£24.00
Special delivery	£1.23	£5.45	£1.23	£5.45

18. Mr Hafiaz said the facts were similar in all cases with the same Landlord.
19. The default notice and time spent thereon (12 minutes) is accepted.
20. Mr Hafiaz said that some form of discount should be made for the properties in Elm Road because of 'bulk instruction'. 15% had been adopted by the Tribunal in previous cases and for these cases 20-25% was appropriate.
21. No time sheets had been produced by Mr Stevenson. Mr Hafiaz asked the Mr Stevenson to explain how time was recorded. Mr Stevenson explained that a 'manuscript note' was put on the file. At this point the Tribunal were shown a sample from a selected file which showed a handwritten note dated giving the time expended.
22. As to specific amounts of time Mr Hafiaz suggested the following:
 - Letters to client 30 (not 36)
 - Perusal of Notice 30 (not 90)
 - Notice of Deposit 6 (not 12)
 - Notice in Default agreed 12
 - Instructing Valuer 12 (not 30)
 - Drafting Lease 18 (not 60)
 - Considering amendments 12 (not 30)
 - Completing 12 (not 30)
 - Disbursements £00.00
23. Mr Hafiaz said all three matters were similar and in respect of Elm Road a discount should apply to reflect the repetitive nature of the work being done at the same time.
24. Mr Stevenson conceded that the time for finalising and completing the lease could be reduced to 30 minutes and similarly 30 minutes for agreeing outstanding matters and reporting for completing.

The Tribunal's Deliberations

25. The Tribunal considered all the evidence both written and oral submitted by the parties in reaching its conclusions.
26. The Tribunal finds that these transactions were not at arm's length with no opportunity for the client (Respondent) to scrutinise the cost. The Applicant is entitled to see time sheets. Directions issued made it clear that detailed time sheets should be produced. The information produced was not in the form of a timesheet but a summary of total time spent which was difficult to analyse and by the same token justify. It is not the responsibility of the Tribunal to trawl through the Respondents files to add up the 'manuscript notes' to establish the total time spent.
27. The Tribunal concluded that the failure to produce timesheets was unacceptable when a 3rd party was expected to pay the eventual bill. The members of the Tribunal did the best they could with the information provided by Mr Stevenson however this lack of compliance with Directions might on a future occasion lead to a less sympathetic interpretation of the time spent.
28. The Tribunal finds that a Grade B fee earner on an *inter party* basis in the county court would be assessed at £177.00 per hour. Whilst this rate is not mandatory on matters such as the one before us it is a good guideline. The Tribunal were not persuaded by Mr Stevenson that a

higher rate should be applied and accordingly find that £177.00 per hour is an appropriate rate for this type of work being carried out by a licensed conveyancer of Ms Haynes experience.

29. The Tribunal find that the information provided by the Respondent was insufficient in detail to enable the Tribunal to assess what was actually done, when and by whom. The Tribunals' overriding duty is to assess what is 'reasonable' (section 60(1) of the 1993 Act). Using our collective knowledge and experience in these matters which is extensive we have determined whether the costs were reasonably incurred in dealing with the matters set out in section 60(1) of the Act.
30. The Tribunal accept Mr Hafiaz's proposition that the transactions are all very similar and in respect of the Elm Road properties deduct 25% to reflect the repetitive nature of the work.
31. Although not specifically evidenced by Mr Stevenson the Tribunal finds that the costs of Office Copy Entries and postage as claimed to be reasonable.
32. Applying those conclusions the Tribunal determine the fees to be paid as follows:

Item	3 Elm	7 Elm	21 Elm	7 Chichester
<i>Time Spent (minutes)</i>				
Notice and Counter				
Notice	48	48	48	48
Notice of Deposit	12	12	12	12
Notice of Default	12	12	12	12
Prepare lease	30	30	30	30
Consider amendments	0	0	0	0
Valuers instructions	12	12	12	12
<i>Time to be spent</i>				
Finalise lease and complete	30	30	30	30
<i>Letters sent</i>				
Leeds Day	36	36	30	30
Clients	60	60	60	60
Valuer	30	30	30	30
<i>Letters to be sent</i>				
Lease outstanding matters	<u>30</u>	<u>30</u>	<u>30</u>	<u>30</u>
	<u>300</u>	<u>300</u>	<u>294</u>	<u>294</u>
Total hours	5.00	5.00	4.90	4.90
at £177	£885.00	£885.00	£867.30	£867.30
less 25%	£663.75	£663.75	£650.48	
<i>Disbursements</i>				
OCE's and Plans	£8.00	£12.00	£20.00	£24.00
Special delivery	£1.23	£5.45	£1.23	£5.45
	£672.98	£681.20	£671.71	£896.75

33. As to VAT the Tribunal determines that VAT is only payable by the Applicant if the Respondent's is not registered for VAT. The Tribunal notes the agreement between the parties that VAT is applicable to 1/3rd of each invoice.

Robert Brown FRICS Chairman

Dated.....