



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**1<sup>st</sup> Case Reference** : **BIR/00CR/OC9/2013/0010**

**2<sup>nd</sup> Case Reference** : **BIR/00CR/OC9/2014/0001**

**1<sup>st</sup> Property** : **198 Apperley Way Homer Hill  
Halesowen B63 2YA**

**2<sup>nd</sup> Property** : **29 Wiltshire Drive Homer Hill  
Halesowen B63 2XU**

**1<sup>st</sup> Applicant** : **Mr A K Simpson**

**2<sup>nd</sup> Applicant** : **Mr I R Collins**

**Representative** : **Lawrence & Wightman  
Chartered Surveyors**

**Respondent** : **Sinclair Gardens Investments  
(Kensington) Limited**

**Representative** : **W.H. Matthews & Co. Solicitors**

**Type of Application** : **Application under Section 91(2)(d) of  
the Leasehold Reform, Housing and  
Urban Development Act 1993**

**Tribunal Members** : **Judge M K Gandham  
Mr J Turner FRICS  
Mr R T Brown FRICS**

**Date and venue of  
Determination** : **Paper Determination made on  
17<sup>th</sup> March 2014 Priory Courts,  
33 Bull Street Birmingham B4 6DS**

**Date of Decision** : **17<sup>th</sup> April 2014**

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**DECISION**

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1. The Tribunal determines that the reasonable legal costs of the Respondent in the first case, 198 Apperley Way, in dealing with the matters in section 60 of the Act are **£652.80 plus VAT (if applicable) inclusive of disbursements.**
2. The Tribunal determines that the reasonable legal costs of the Respondent in the second case, 29 Wiltshire Drive, in dealing with the matters in section 60 of the Act are **£734.00 plus VAT (if applicable) inclusive of disbursements.**

## **Reasons for Decision**

### **Introduction**

3. This is a matter that deals with two separate applications under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 for the determination of the freeholder's reasonable legal costs.
4. The Tribunal received an Application in respect of 198 Apperley Way Homer Hill Halesowen B63 2YA, dated 19<sup>th</sup> December 2013, and an Application in respect of 29 Wiltshire Drive Homer Hill Halesowen B63 2XU, dated 2<sup>nd</sup> January 2014.
5. Directions were issued by the Tribunal in relation to both matters on 9<sup>th</sup> January 2014. Both matters were listed to be heard on the same day and - due to the fact that the properties are located in the same area, the Respondent and the issues in dispute were (in the main) the same and the Applicant's representative in both matters was Lawrence & Wightman - the cases have been considered and determined together.
6. Submissions and counter submissions were received from both parties.
7. The Tribunal understands that the terms of the acquisition, other than legal costs, have been agreed.
8. The parties are agreed that the Tribunal may determine the matters in issue on the papers submitted without the need for an oral hearing.

### **The Law**

9. The relevant law is set out below:

***Leasehold Reform, Housing and Urban Development Act 1993  
Section 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 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 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.*

### **Applicant's Submissions**

10. A Statement together with supporting evidence was forwarded to the Tribunal by Ms Abel, a partner with Lawrence & Wightman Chartered Surveyors. She requested that both cases be heard together as they had been dealt with by the Respondent's Representative at the same time.
11. She confirmed that, at the time that the amount payable for the premium and the freeholder's surveyor's fees had been agreed, the freeholder's solicitor had not given an indication of the level of costs that would be incurred so this element had not been agreed between the parties.

12. She confirmed that both parties agreed that the leaseholder was responsible for the freeholder's reasonable costs under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act') and that the main points in dispute were as to whether the items charged to the leaseholder were items that could be charged under section 60 and the amount of time spent on the items charged and whether this was reasonable in the context of the particular cases. In addition to this, Ms Abel also went on to state that a Grade B Solicitor would be more than capable of carrying out the type of work required in the applications and, therefore, she also raised the issue of the charging rate.
13. Ms Abel stated that Mr Chevalier, who joined W H Mathews & Co in July 2013 as a consultant, was a retained solicitor for the Respondent and that the Respondent was the proprietor of the freehold reversion of over 200 registered leasehold interests on the estate in which both properties were situated. Ms Able forwarded a copy of the freehold title detailing the same. She submitted that, as Mr Chevalier has worked on a number of cases over the years on behalf of the Respondent, he should be considered to be an expert in this area and therefore this type of work should be considered routine for him. She argued that he would have a standard form of instructions, draft counter notice and a standard form of draft lease extension for such an estate and therefore this was not a case where a new lease extension document would need to be drafted *from scratch* and the amount of time taken would therefore be substantially reduced.
14. Ms Abel submitted, with her statement, time sheets from two solicitors firms, one based in Coventry and one based in Kidderminster, in support of her argument that the amount of time spent in each case was not reasonable. She referred to the case of *Drax v Lawn Court Freehold Limited* (2010) UKUT 81(LC) which stated that costs should be reasonable and be incurred in pursuance of the Section 13 Notice. She submitted that Section 33 could easily be translated to Section 60 under lease extensions.
15. In relation to charging rates, Ms Abel accepted that, in relation to the case of 29 Wiltshire Drive, Mr Chevalier worked as a sole practitioner for some part, but submitted that the remainder of the work in 29 Wiltshire Drive and all work carried out in relation to 198 Apperley Way should have been carried out by a Grade B solicitor at a charging rate of £192 per hour. Ms Abel forwarded a breakdown of what she considered to be a reasonable timeframe and reasonable costs in relation to each case.
16. Ms Abel also submitted that the scope of the legislation did not support the freeholder's solicitor discussing the valuation report in depth with his client, but that it was for the valuer to discuss and advise the client and then for the client to then direct the solicitor as to the figure that ought to be placed within the counter notice.

17. Ms Abel therefore contended that the reasonable legal costs under section 60 of the Act in relation to 29 Wiltshire Drive should be £507.20 (plus VAT and disbursements) and in relation to 198 Apperley Drive should be £460.80 (plus VAT and disbursements), based on each matter taking 24 units of time (each unit of time equating to 6 minutes).

### **Respondent's Submissions**

18. The Respondent submitted a separate statement in relation to each of the properties - in relation to 29 Wiltshire Drive a statement was submitted by Mr Chevalier and in relation to 198 Apperley Way a statement was submitted by Mr Lawrence. Each statement included a schedule detailing the time spent in relation to investigating the title and the grant of a new lease; however, the majority of the arguments in respect of the two cases were the same.
19. The Respondent's Representative submitted that the charging rate of £250 per hour was reasonable as, under the Act, the landlord was not required to find the cheapest or cheaper solicitor but only to give instructions as he would ordinarily give if he was going to bear the cost himself.
20. The Respondent's Representative submitted that cases of this nature were complex and gave a detailed account of the services provided. In relation to the valuation report, the Respondent's Representative stated that the valuer had to be fully instructed and that they worked in tandem. The Respondent's Representative stated that their client would expect his solicitor to read the expert's report and offer his observations. The Respondent's Representative also referred to the Civil Procedure Rules which were appended to the statements.
21. The Respondent's Representative referred to the decision in *1-30 Hampden Court London LON/ENF/785/02* where Professor Farrand QC had stated at paragraph 27 that expenditure by the landlord is recoverable from the nominee purchaser subject only to the requirement of reasonableness. They submitted a letter on letter headed paper from Sinclair Gardens Investments (Kensington) Ltd which appeared to confirm its consent in relation to costs. The Respondent's Representative argued that, in the absence of any proof to confirm that the Respondent would not pay their costs, the costs should be regarded as reasonably incurred and contended that their costs came within a band of reasonableness of costs for such matters.
22. In relation to the time taken, the Respondent's Representative contended that, just because a solicitor is experienced, it does not follow that less time would be spent than a less experienced solicitor, as a more experienced solicitor would be more aware of any potential pitfalls. In addition, they stated that just because a lease extension had been given in the same building some months or years previously, it did not follow that a solicitor did not have to reconsider all the information afresh and would not need to read the whole lease.

23. In relation to the charge out rate, the Respondent's Representative stated that the Respondent had agreed to the rate of £250 per hour and that this figure had been considered reasonable in some previous decisions of the Leasehold Valuation Tribunal.
24. In relation to the case of *Drax*, the Respondent's Representative submitted that the Applicant's Representative had not followed the case correctly and that the hourly rate in that case was significantly in excess of the hourly rate proposed by the Applicant.
25. The Respondent's Representative disputed the amounts charged by the other solicitors in the Applicant's Representative's statement and noted that the firms gave no detailed analysis for the services provided, there were no witness statements by them and that one of the quotes was not even on headed note paper.
26. The Respondent's Representatives therefore submitted that the legal costs claimed by them of £1,725.00 (plus VAT and disbursements) for each case, based on their calculation of 56 units of time per matter, were reasonable legal costs under section 60 of the Act.

### **The Tribunal's Deliberations**

27. The Tribunal has considered all of the written evidence submitted by the parties and has made its determination by firstly considering which services would be recoverable under Section 60, secondly by considering the time that should reasonably be taken to deal with those matters and finally the reasonable charge out rate for the work carried out.

### ***Items recoverable under Section 60***

28. Section 60 of the Act is quite clear in its wording as to the services. It includes '*any investigation reasonably undertaken of the tenant's right to a new lease*' and '*the grant of a new lease*' together with reasonable costs which may be '*incidental to*' to these matters.
29. The Tribunal considers that instructing a valuer, considering the valuation and discussing the same with the client and the valuer do not fall within this remit. It is up to the client to instruct their solicitor and valuer and it is no more in the province of the solicitor to check the valuation in such matters (where the valuation is for the sole purposes of fixing the premium), as it is for the valuer to check the draft lease drawn up by the solicitor. If a client requests his solicitor's advice in these ancillary issues and that solicitor chooses to give such advice – that is for them to decide, but the Tribunal does not consider that such matters could possibly fall within the scope of reasonable costs of anything '*incidental to*' or including '*any investigation.... of the tenant's right to a new lease*' or '*grant of a new lease*'.

### ***Time taken***

30. The Tribunal does not consider, on the evidence presented, that either of these cases is particularly complex and both parties acknowledge that a significant number of transactions had taken place on this estate previously, which undoubtedly would have an effect on the time spent. The Tribunal does not, however, agree with Ms Abel that this is simply a tick box exercise whereby, as the Respondent's Representatives have dealt with a number of matters previously they can simply transpose the details on to a format they already have in their possession.
31. In addition, the Tribunal agrees with the Respondent's Representative that, in order to evaluate as to whether a case is complex, a solicitor would initially have to investigate all matters carefully and thoroughly.
32. The Tribunal does, however, consider that some of the work carried out by the Respondent's Representative appears to be repetitious with, for example, units charged on more than one occasion for obtaining instructions.

### ***Chargeable Rate***

33. The Tribunal considered in detail the submissions by both parties as to the charge out rate. The Tribunal is not bound by previous decisions of this Tribunal and, although it has regard to the Civil Procedure Rules, it is not bound by them but by The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013.
34. The Tribunal would not normally regard the work involved in these cases as requiring a Grade A fee earner. The Tribunal does note, however, that in the case of 29 Wiltshire Drive, the rate of £250 has been accepted by the Applicant's Representative for part of the transaction.
35. The Tribunal considers that the letter, submitted by the Respondent agreeing to their Representative's costs, is of little evidential value as the letter does not detail by whom it has been signed.
36. The Tribunal considered the wording in the section 60 (2) of the Act which clearly states that '*...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 such costs*'.
37. The Tribunal considers that this phrase does not, as the Respondent's Representative imply, state that the Applicant should be responsible for any costs that a landlord's solicitor should charge so long as evidence is produced that the landlord would pay the same, but, in fact, the inclusion by Parliament of the words '*only*' sets this as the upper limit as to the amount of costs that would be payable. In addition, the repetition of the reasonable element in relation to '*costs in respect of such services*'

again requires the Tribunal to not simply accept the Respondent's agreement to pay, but requires the Tribunal to consider whether such costs (even if agreed) were reasonable. If this were not the case, the provisions in respect of the Tribunal's jurisdiction under section 91 of the Act to determine the costs would not have been required.

38. Taking all of this in to account, the Tribunal considers that, in relation to both matters and based on the evidence submitted in these cases, 34 units of time (each unit of time equating to 6 minutes) is a reasonable amount of time for the work referred to, and in dispute, under section 60 of the Act. It also considers that it would be reasonable for the work in both of these cases to have been carried out by a Grade B solicitor at a rate of £192 per hour. (In relation to the matter of 29 Wiltshire Drive, as the rate of £250 per hour has been accepted by the Applicant's Representative for part of the transaction - equating to 14 units of time - the Tribunal has adjusted the reasonable legal costs payable accordingly).
39. 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. In such circumstances VAT will not be payable by the Applicants.

### **Appeal Provisions**

40. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM

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Judge M. K. Gandham





**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

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**1<sup>st</sup> Applicant** : **Mr A K Simpson**

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**Tribunal Members** : **Judge M K Gandham  
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**Date and venue of  
Determination** : **Paper Determination made on  
17<sup>th</sup> March 2014 Priory Courts,  
33 Bull Street Birmingham B4 6DS**

**Date of Decision** : **17<sup>th</sup> April 2014**

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**DECISION**

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1. The Tribunal determines that the reasonable legal costs of the Respondent in the first case, 198 Apperley Way, in dealing with the matters in section 60 of the Act are **£652.80 plus VAT (if applicable) inclusive of disbursements.**
2. The Tribunal determines that the reasonable legal costs of the Respondent in the second case, 29 Wiltshire Drive, in dealing with the matters in section 60 of the Act are **£734.00 plus VAT (if applicable) inclusive of disbursements.**

## **Reasons for Decision**

### **Introduction**

3. This is a matter that deals with two separate applications under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 for the determination of the freeholder's reasonable legal costs.
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9. The relevant law is set out below:

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*(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 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.*

### **Applicant's Submissions**

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12. She confirmed that both parties agreed that the leaseholder was responsible for the freeholder's reasonable costs under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act') and that the main points in dispute were as to whether the items charged to the leaseholder were items that could be charged under section 60 and the amount of time spent on the items charged and whether this was reasonable in the context of the particular cases. In addition to this, Ms Abel also went on to state that a Grade B Solicitor would be more than capable of carrying out the type of work required in the applications and, therefore, she also raised the issue of the charging rate.
13. Ms Abel stated that Mr Chevalier, who joined W H Mathews & Co in July 2013 as a consultant, was a retained solicitor for the Respondent and that the Respondent was the proprietor of the freehold reversion of over 200 registered leasehold interests on the estate in which both properties were situated. Ms Able forwarded a copy of the freehold title detailing the same. She submitted that, as Mr Chevalier has worked on a number of cases over the years on behalf of the Respondent, he should be considered to be an expert in this area and therefore this type of work should be considered routine for him. She argued that he would have a standard form of instructions, draft counter notice and a standard form of draft lease extension for such an estate and therefore this was not a case where a new lease extension document would need to be drafted *from scratch* and the amount of time taken would therefore be substantially reduced.
14. Ms Abel submitted, with her statement, time sheets from two solicitors firms, one based in Coventry and one based in Kidderminster, in support of her argument that the amount of time spent in each case was not reasonable. She referred to the case of *Drax v Lawn Court Freehold Limited* (2010) UKUT 81(LC) which stated that costs should be reasonable and be incurred in pursuance of the Section 13 Notice. She submitted that Section 33 could easily be translated to Section 60 under lease extensions.
15. In relation to charging rates, Ms Abel accepted that, in relation to the case of 29 Wiltshire Drive, Mr Chevalier worked as a sole practitioner for some part, but submitted that the remainder of the work in 29 Wiltshire Drive and all work carried out in relation to 198 Apperley Way should have been carried out by a Grade B solicitor at a charging rate of £192 per hour. Ms Abel forwarded a breakdown of what she considered to be a reasonable timeframe and reasonable costs in relation to each case.
16. Ms Abel also submitted that the scope of the legislation did not support the freeholder's solicitor discussing the valuation report in depth with his client, but that it was for the valuer to discuss and advise the client and then for the client to then direct the solicitor as to the figure that ought to be placed within the counter notice.

17. Ms Abel therefore contended that the reasonable legal costs under section 60 of the Act in relation to 29 Wiltshire Drive should be £507.20 (plus VAT and disbursements) and in relation to 198 Apperley Drive should be £460.80 (plus VAT and disbursements), based on each matter taking 24 units of time (each unit of time equating to 6 minutes).

### **Respondent's Submissions**

18. The Respondent submitted a separate statement in relation to each of the properties - in relation to 29 Wiltshire Drive a statement was submitted by Mr Chevalier and in relation to 198 Apperley Way a statement was submitted by Mr Lawrence. Each statement included a schedule detailing the time spent in relation to investigating the title and the grant of a new lease; however, the majority of the arguments in respect of the two cases were the same.
19. The Respondent's Representative submitted that the charging rate of £250 per hour was reasonable as, under the Act, the landlord was not required to find the cheapest or cheaper solicitor but only to give instructions as he would ordinarily give if he was going to bear the cost himself.
20. The Respondent's Representative submitted that cases of this nature were complex and gave a detailed account of the services provided. In relation to the valuation report, the Respondent's Representative stated that the valuer had to be fully instructed and that they worked in tandem. The Respondent's Representative stated that their client would expect his solicitor to read the expert's report and offer his observations. The Respondent's Representative also referred to the Civil Procedure Rules which were appended to the statements.
21. The Respondent's Representative referred to the decision in *1-30 Hampden Court London* LON/ENF/785/02 where Professor Farrand QC had stated at paragraph 27 that expenditure by the landlord is recoverable from the nominee purchaser subject only to the requirement of reasonableness. They submitted a letter on letter headed paper from Sinclair Gardens Investments (Kensington) Ltd which appeared to confirm its consent in relation to costs. The Respondent's Representative argued that, in the absence of any proof to confirm that the Respondent would not pay their costs, the costs should be regarded as reasonably incurred and contended that their costs came within a band of reasonableness of costs for such matters.
22. In relation to the time taken, the Respondent's Representative contended that, just because a solicitor is experienced, it does not follow that less time would be spent than a less experienced solicitor, as a more experienced solicitor would be more aware of any potential pitfalls. In addition, they stated that just because a lease extension had been given in the same building some months or years previously, it did not follow that a solicitor did not have to reconsider all the information afresh and would not need to read the whole lease.

23. In relation to the charge out rate, the Respondent's Representative stated that the Respondent had agreed to the rate of £250 per hour and that this figure had been considered reasonable in some previous decisions of the Leasehold Valuation Tribunal.
24. In relation to the case of *Drax*, the Respondent's Representative submitted that the Applicant's Representative had not followed the case correctly and that the hourly rate in that case was significantly in excess of the hourly rate proposed by the Applicant.
25. The Respondent's Representative disputed the amounts charged by the other solicitors in the Applicant's Representative's statement and noted that the firms gave no detailed analysis for the services provided, there were no witness statements by them and that one of the quotes was not even on headed note paper.
26. The Respondent's Representatives therefore submitted that the legal costs claimed by them of £1,725.00 (plus VAT and disbursements) for each case, based on their calculation of 56 units of time per matter, were reasonable legal costs under section 60 of the Act.

### **The Tribunal's Deliberations**

27. The Tribunal has considered all of the written evidence submitted by the parties and has made its determination by firstly considering which services would be recoverable under Section 60, secondly by considering the time that should reasonably be taken to deal with those matters and finally the reasonable charge out rate for the work carried out.

### ***Items recoverable under Section 60***

28. Section 60 of the Act is quite clear in its wording as to the services. It includes '*any investigation reasonably undertaken of the tenant's right to a new lease*' and '*the grant of a new lease*' together with reasonable costs which may be '*incidental to*' to these matters.
29. The Tribunal considers that instructing a valuer, considering the valuation and discussing the same with the client and the valuer do not fall within this remit. It is up to the client to instruct their solicitor and valuer and it is no more in the province of the solicitor to check the valuation in such matters (where the valuation is for the sole purposes of fixing the premium), as it is for the valuer to check the draft lease drawn up by the solicitor. If a client requests his solicitor's advice in these ancillary issues and that solicitor chooses to give such advice – that is for them to decide, but the Tribunal does not consider that such matters could possibly fall within the scope of reasonable costs of anything '*incidental to*' or including '*any investigation.... of the tenant's right to a new lease*' or '*grant of a new lease*'.

### ***Time taken***

30. The Tribunal does not consider, on the evidence presented, that either of these cases is particularly complex and both parties acknowledge that a significant number of transactions had taken place on this estate previously, which undoubtedly would have an effect on the time spent. The Tribunal does not, however, agree with Ms Abel that this is simply a tick box exercise whereby, as the Respondent's Representatives have dealt with a number of matters previously they can simply transpose the details on to a format they already have in their possession.
31. In addition, the Tribunal agrees with the Respondent's Representative that, in order to evaluate as to whether a case is complex, a solicitor would initially have to investigate all matters carefully and thoroughly.
32. The Tribunal does, however, consider that some of the work carried out by the Respondent's Representative appears to be repetitious with, for example, units charged on more than one occasion for obtaining instructions.

### ***Chargeable Rate***

33. The Tribunal considered in detail the submissions by both parties as to the charge out rate. The Tribunal is not bound by previous decisions of this Tribunal and, although it has regard to the Civil Procedure Rules, it is not bound by them but by The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013.
34. The Tribunal would not normally regard the work involved in these cases as requiring a Grade A fee earner. The Tribunal does note, however, that in the case of 29 Wiltshire Drive, the rate of £250 has been accepted by the Applicant's Representative for part of the transaction.
35. The Tribunal considers that the letter, submitted by the Respondent agreeing to their Representative's costs, is of little evidential value as the letter does not detail by whom it has been signed.
36. The Tribunal considered the wording in the section 60 (2) of the Act which clearly states that '*...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 such costs*'.
37. The Tribunal considers that this phrase does not, as the Respondent's Representative imply, state that the Applicant should be responsible for any costs that a landlord's solicitor should charge so long as evidence is produced that the landlord would pay the same, but, in fact, the inclusion by Parliament of the words '*only*' sets this as the upper limit as to the amount of costs that would be payable. In addition, the repetition of the reasonable element in relation to '*costs in respect of such services*'

again requires the Tribunal to not simply accept the Respondent's agreement to pay, but requires the Tribunal to consider whether such costs (even if agreed) were reasonable. If this were not the case, the provisions in respect of the Tribunal's jurisdiction under section 91 of the Act to determine the costs would not have been required.

38. Taking all of this in to account, the Tribunal considers that, in relation to both matters and based on the evidence submitted in these cases, 34 units of time (each unit of time equating to 6 minutes) is a reasonable amount of time for the work referred to, and in dispute, under section 60 of the Act. It also considers that it would be reasonable for the work in both of these cases to have been carried out by a Grade B solicitor at a rate of £192 per hour. (In relation to the matter of 29 Wiltshire Drive, as the rate of £250 per hour has been accepted by the Applicant's Representative for part of the transaction - equating to 14 units of time - the Tribunal has adjusted the reasonable legal costs payable accordingly).
39. 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. In such circumstances VAT will not be payable by the Applicants.

#### **Appeal Provisions**

40. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM

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Judge M. K. Gandham