



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

**Case Reference** : BIR/47UB/OAF/2015/0015c

**Property** : 10 Brookside Drive, Catshill, Bromsgrove, B61 9LD

**Applicants** : Mr Stephen John Thompson and Mrs Gail Thompson

**Representative** : Mr A.W. Brunt FRICS

**Respondent** : Mr Michael Foster

**Representative** : Mr M.H.Adcock of Messrs Adcocks, Solicitors

**Type of Application** : Determination of the landlord's reasonable costs to enfranchise the Freehold interest under section 21(1)(ba) of The Leasehold Reform Act 1967

**Tribunal Members** : I.D. Humphries B.Sc.(Est.Man.) FRICS  
Judge W.J. Martin

**Determination** : By Hearing at the First-tier Tribunal (Property Chamber),  
Priory Courts, Bull Street, Birmingham, 20th May 2015

**Date of Decision** :  
**- 1 JUL 2015**

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**DECISION**

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## Introduction

- 1 The Applicants hold a long leasehold interest in the subject property and applied to the First-tier Tribunal (Property Chamber) by letter dated 11th March 2015 for determination of the price payable for the Freehold interest under s.9(1) of the Leasehold Reform Act 1967 and the landlord's costs under section 21(1)(ba).
- 2 The price of the Freehold was subsequently agreed by the parties as advised in a submission from the Applicants' agent dated 11th May 2015, but the landlord's costs had not been agreed and to that extent the Application remained live.

## The Law

- 3 Section 21(1) of the Act provides:  
'The following matters shall, in default of agreement, be determined by a leasehold valuation tribunal namely, -  
... (ba) the amount of any costs payable under section 9(4) or 14(2) ...'
- 4 Section 9(4) provides:  
'Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any proviso of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters:-
  - (a) any investigation by the landlord of that person's right to acquire the freehold;
  - (b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;
  - (c) deducing, evidencing or verifying the title to the house and premises or any estate or interest therein;
  - (d) making out and furnishing such abstracts and copies as the persons giving the notice may require;
  - (e) any valuation of the house and premises.
- 5 The jurisdiction of the former leasehold valuation tribunal was transferred to the First-tier Tribunal (Property Chamber) on 1st July 2013.

## Issues In Dispute

- 6
  - 1 The landlord's legal fees.
  - 2 The landlord's surveyor's fees.
- 7 The Tribunal wrote to the parties on 21st April 2015 advising that a Hearing would be held in Birmingham on 20th May. Representations were received from both parties before the Hearing but the only party in attendance was Mr Brunt for the Applicants. Mr Adcock wrote to the Tribunal by letter dated 19th May which was received by the Tribunal on 20th May, advising that he would not be attending as he was on holiday until 26th May and also that his client's Surveyor Mr Bates was not resident in the UK.

## Legal Fee

### 8 Applicants' Submission

Mr Brunt for the Applicant submitted that the legal work involved in the transfer by the landlord's Solicitor would not be overly complicated as most of the work could be carried out by a fee earner. At the Hearing Mr Brunt gave an example of another case where he had recently agreed the Landlord's legal costs in an enfranchisement case at £450 plus VAT and disbursements. He accepted that the landlord need not employ the cheapest Solicitor in an area and was entitled to his use normal advisers. However, in this case, the landlord's Solicitors had not served a notice in reply admitting the claim or complied with the Tribunal Directions. In his view a reasonable legal fee for the work in s.9(4) would be £475 plus disbursements and VAT.

### 9 Respondent's Submission

Mr Adcock's letter of 19th May was treated by the Tribunal as his Submission in which he claimed £800 plus VAT legal fees. This comprised one hour's work under s.9(4)(a) at £250 / hour and £550 plus VAT for anticipated work under s.9(4)(b) and (c) based on two hour's work although the Tribunal noted at the Hearing that the hourly rate in the letter varied from £250 to £275. He also claimed a £24 disbursement for Land Registry copies of the lease and title register.

10 No breakdown of the cost or anticipated cost was provided and he said in his letter that he would have been unable to provide a schedule of work by the next day, the day of the Hearing. There was a computer printout attached to the letter listing various times and brief descriptions of the work involved such as 'letters short', 'email short' and 'perusal', but nothing showing exactly what had been carried out or anticipated to be carried out to complete the transaction.

### 11 Tribunal Determination

The Tribunal had provided ample notice of the Hearing date and was surprised to hear that Mr Adcock was on holiday and not notified the Tribunal until the day before the Hearing. No detailed costings or estimates had been provided from which to assess the fee and in the circumstances the Tribunal determines the fee based on its own general (but not specific) experience of legal costs for this type of transaction. The Tribunal agrees Mr Adcock's assessment of the time expended on the matter at three hours, but does not agree the rates claimed by Mr Adcock. The work involved can be accomplished by a Grade B solicitor, in respect of which the Tribunal finds that a rate of £177 per hour is appropriate. Accordingly, the Tribunal determines the landlord's costs under sections 9(4)(a)-(d) at £531 plus £24 for disbursements and VAT if payable.

## Surveyor's Fee

### 12 Applicants' Submission

Mr Brunt advised the Tribunal at the Hearing that according to his clients, the landlord's Valuer had not inspected the interior of the house and as far as he was aware there had been no inspection. In his view, a reasonable fee would be £250.

### 13 Respondent's Submission

Mr Adcock's letter advised that his client's Valuer, Mr Bates, was employed by his office but 'not resident in the UK'. He claimed that Mr Bates had spent 2.5 hours on the valuation at his hourly rate of £200/ hour and claimed £475 plus VAT as his fee, but again, there was no detailed breakdown of time input provided. The computer printout referred to above highlighted two items totalling 2.5 hours for 'research', but whether this was time claimed by Mr Bates was not clear.

14 **Tribunal Determination**

The landlord is entitled to obtain a valuation of his interest and the tenant is required to pay the fee at a reasonable level but in this case, there was no evidence that Mr Bates had inspected, there was no valuation with the submitted papers and he was not at the Hearing to give evidence.

- 15 However, the Tribunal considers that on the balance of probabilities a valuation had been carried out but without a site inspection. On this basis, the Tribunal finds a reasonable fee under section 9(4)(e) to be £250.

**VAT**

- 16 The Applicants are required to pay the Respondent's costs. If the Respondent is VAT registered and able to re-claim VAT on fees paid to its solicitor and surveyor from HMRC as an input, it has suffered no loss and the Applicants are not required to pay VAT.
- 17 If, however, the Respondent is not VAT registered and, therefore, unable to reclaim VAT on fees as an input for VAT purposes, the Applicant is required to pay the VAT incurred on fees paid by the Respondent.

**Summary**

- 18 The Tribunal determines the landlord's reasonable legal fee at £531.00 plus £24.00 disbursement and the Surveyor's fee at £250.00.

**Application to the Upper Tribunal**

- 19 If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property). Any such application must be received within 28 days after the decision and accompanying reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

I.D. Humphries B.Sc.(Est.Man.) FRICS  
Chairman

Date - 1 JUL 2015