FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**AB/LON/00AU/OC9/2021/0145**
HMCTS code (paper, video, audio)		**P: PAPERREMOTE**
Property	**:**	**Flat 34 Southside, Dalmeny Avenue, Tufnell Park, London N7 0QH**
Applicants	**:**	**Rupert Gibson and Fatma Altinok**
Representative	**:**	**Wilson Barca LLP**
Respondent	**:**	**Mountview Estates Plc**
Representative	**:**	**Wallace LLP**
Type of application	**:**	**Section 60 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal member(s)	**:**	**Judge N Rushton QC**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**16 November 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a hearing on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested the same and all issues could be determined on paper. The documents that the Tribunal were referred to are in a bundle of 189 pages, the contents of which have been noted.

Decision

Pursuant to section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 statutory costs of £2,388 inclusive of VAT are payable by the Applicant tenants to the Respondent landlord for legal fees.

The application

1. By an application dated 30 July 2021 the Applicant tenants ("**the Tenants**") sought a determination under sections 60(1) and 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("**the Act**") of the landlord's statutory costs incurred on a statutory lease extension which completed on 30 July 2021.

2. Standard directions were issued on 26 August 2021 and have essentially been complied with by the parties. The directions stated that the application was suitable for determination on the paper track, without an oral hearing but the parties were informed of their right to request an oral hearing. No such request was received and accordingly the tribunal has determined the statutory costs on the basis of the written submissions and other documents in the bundle.

Background

3. The relevant property is Flat 34 Southside, Dalmeny Avenue, Tufnell Park, London N7 0QH ("**the Flat**"). The Respondent landlord ("**Mountview**") is the freehold owner of the block of which the Flat forms part. Mountview is the Competent Landlord for the purposes of the Act. There is no intermediate landlord.

4. The Tenants held a long lease of the Flat for 125 years from 25 December 1974. By a notice dated 19 April 2021 the Tenants notified Mountview of a claim to a new lease of the Flat under s.42 of the Act, for an additional 90 year term at a peppercorn rent. The proposed premium was £25,500.

5. On 8 June 2021 Mountview's solicitors, Wallace LLP, served a counter-notice under s.45(2)(a) which admitted the Tenants' right to acquire a new lease of the Flat, but made a counter-proposal of a premium of £30,000 and annexed a proposed new lease, being the same terms as the existing lease subject to modifications required by the Act and at a peppercorn rent.

6. The parties subsequently agreed the premium of £30,000 and the terms of the new lease, and the lease was completed on 30 July 2021.

7. Mountview sought payment of its costs incurred in connection with the new lease, under s.60 of the Act. By an email dated 15 July 2021, Fleur Neale of Wallace LLP provided a total figure of £2,805 (including anticipated future costs; not apparently including VAT).

8. There is no application in relation to the valuer costs.

9. The application relates only to Mountview's legal costs, with Wallace LLP. The Tenants stated in the application that the costs claimed by Mountview were £3,300 including VAT for over 6 hours work. They stated that the amount they considered appropriate was £1,250 including VAT, based on 4 hours work at a Grade B fee earner's rate.

10. The relevant legal provisions are set out in an appendix to this decision.

The claimed costs

11. In accordance with the directions, Wallace LLP prepared and sent to the Tenants' solicitors a costs breakdown and an interim invoice for £2,137.20 issued to Mountview, also in the bundle. The costs breakdown sets out the work done; who it was done by; the hours spent; hourly rate applicable and so amount incurred. The total fees claimed are £2,877 plus VAT of £565.40, or a total of £3,392.40.

12. The total time claimed is 6.4 hours, of which 3.5 hours was by the partner Samantha Bone, at £495 per hour, and 2.9 hours was by two Assistant Solicitors, at £385 per hour.

13. Wallace LLP are located at One Portland Place, London W1B 1PN.

14. Following receipt of these documents, the Tenants put in a Statement of Case from their solicitor Ioana Main dated 7 October 2021. Ms Main relies on the following:

    (a) The hourly rate charged by the Tenants' solicitor was £200 throughout, in contrast with the rates charged by Wallace LLP;

    (b) She says the matter was not particularly complex, so as to require a team of people to be involved; that this had led to an unreasonable amount of costs being incurred and it was highly likely there had been an element of duplication;

    (c) Wallace LLP held themselves out as having expertise in lease extensions so one would expect them to be more efficient than someone who was new to these matters;

    (d) Mountview was located in London N14 and the Flat was in N7. It was not reasonable for the landlord to instruct a firm of solicitors based in W1B. In reliance upon *Wraith v. Sheffield Forgemasters Ltd* [1998] 1 WLR 132, she said it was

unreasonable of them to claim the costs of having instructed a solicitor in a more expensive location.

(e) The time taken on the different stages was unreasonable:

a. 1.5 hours had been spent on drafting the counter-notice, which should have taken 0.3-0.4 hours;

b. Over 4 hours had been spent on investigating the claim to a new lease, considering the valuer's report and serving the s.45 notice, which was unreasonable as Mountview knew its tenants, the s.42 notice was only 4 pages long, as was the counter-notice; considering the valuer report should have taken no more than 0.2 hours. Investigating the claim should have taken no more than 0.2 hours, rather than the 1.5 hours claimed.

c. The time charged for preparing the new lease was excessive given that it was claimed and agreed that the new lease should be in the same terms as the old lease, and will have followed a standard template.

(f) In summary, the amount of the costs was unreasonable; the hourly rates were unreasonable; the time spent was unreasonable; and the use of solicitors in this location was unreasonable.

15. Wallace LLP have served a detailed statement in reply on behalf of Mountview, which the tribunal has carefully considered. In that statement it is explained that Mountview's solicitor Samantha Bone is a partner in the leasehold enfranchisement department of a London firm of solicitors, and is a Grade A fee earner with an hourly rate of £495 p.h.. She dealt with responding to the claim. Assistant Solicitors Fleur Neale and Shamin Kashem, also Grade A but with hourly rates of £385 p.h., prepared and dealt with the agreement of the new lease, and the terms of acquisition.

16. The statement also exhibited a number of previous decisions of the First Tier Tribunal on s.60 costs applications, relied on by Wallace LLP, in which they say their hourly rates and amounts of time spent have been accepted as reasonable.

17. Wallace LLP say they have been dealing with Mountview's enfranchisement matters for many years and are their choice of solicitor because of their knowledge and capacity to deal with this specialist work. They say that the charge out rates are entirely consistent with the usual charge out rates for solicitors in Central London. They say that the provisions of the Act are complex and on receipt of a claim for a new lease, it is necessary for a relatively experienced fee earner to deal with a number of steps including considering the validity of the claim and entitlement to a new lease, instructing and dealing with the valuer and preparing a counter notice and new lease. Given the technical nature of the Act and the draconian consequences of any failure to serve a valid counter-notice or comply

with time limits, it is said it is reasonable for Mountview to instruct appropriate experienced advisers.

18. It is denied that there was any duplication of work, based on the details in the costs breakdown. It is also said that the work has been divided between the different fee earners in the most efficient manner. It is also submitted that the time spent is reasonable and all falls within the ambit of sub-sections 60(1) (a) to (c) (see Appendix to this decision).

Applicable legal principles

19. In *Metropolitan Property Realisations v Moss* [2013] UKUT 415, Martin Rodger QC, Deputy President, gave the following guidance on the approach to be adopted to applications under s.60:

"*9. These provisions are straightforward and their purpose is readily understandable. Part I of the 1993 Act is expropriatory, in that it confers valuable rights on tenants of leasehold flats to compel their landlords to grant new interests in those premises whether they are willing to do so or not. It is a matter of basic fairness, necessary to avoid the statute from becoming penal, that the tenant exercising those statutory rights should reimburse the costs necessarily incurred by any person in receipt of such a claim in satisfying themselves that the claim is properly made, in obtaining advice on the sum payable by the tenant in consideration for the new interest and in completing the formal steps necessary to create it.*

10. On the other hand, the statute is not intended to provide an opportunity for the professional advisers of landlords to charge excessive fees, nor are tenants expected to pay landlords' costs of resolving disputes over the terms of acquisition of new leases. Thus the sums payable by a tenant under section 60 are restricted to those incurred by the landlord within the three categories identified in section 60(1) and are further restricted by the requirement that only reasonable costs are payable. Section 60(2) provides a ceiling by reference to the reasonable expectations of a person paying the costs from their own pocket; the costs of work which would not have been incurred, or which would have been carried out more cheaply, if the landlord was personally liable to meet them are not reasonable costs which the tenant is required to pay.

11. Section 60 therefore provides protection for both landlords and tenants: for landlords against being out of pocket when compelled to grant new interests under the Act, and for tenants against being required to pay more than is reasonable."

20. In the Upper Tribunal case of *Drax v Lawn Court Freehold Limited* [2010] UKUT 81 (LC), which concerned s.33 of the 1993 Act, an analogous provision to s.60, it was noted at [20] that the tribunal had recognised that enfranchisement is analogous to compulsory purchase. At [22] the tribunal said:

"*22. To qualify for payment by the nominee purchaser such costs must be reasonable and have been incurred in pursuance of the section 13 notice in connection with the purposes listed in sub-paragraphs 33(1)(a) to (e). The nominee purchaser is also protected by section 33(2) which limits the costs to those that the reversioner would be prepared to pay if he were using his own money rather than being paid by the nominee purchaser. This, in effect, introduces a (limited) test of proportionality of a kind associated with the assessment of costs on the standard basis.*"

21. As set out above, the Tenants' solicitors have sought to rely on the decision in *Wraith* on the issue of the location of the landlord's solicitors. However that case concerned recovery of inter partes costs in litigation, and as such is not really applicable to s.60.

22. In *Sidewalk Properties Ltd v Twinn*, [2015] UKUT 122 (LC); [2016] 2 Costs L.R. 253 (2016), Martin Rodger QC said at [42] that where it was alleged the landlord's costs were excessive, the determinative issue was likely to be the ceiling imposed by s.60(2), i.e. whether the costs were an amount that the landlord might reasonably have expected to pay if he had been personally liable for them. When determining these costs, the Deputy President said (at [40] – [42]) that it would have been appropriate for the tribunal to have taken into account guideline hourly rates for a solicitor in Band A (it having been accepted by the tribunal that this was specialist work justifying a solicitor at that rate) and the effect on the overall costs of using a solicitor in London.

The tribunal's determination

23. The tribunal accepts the submission on behalf of Mountview that it was reasonable for them to instruct specialists in enfranchisement with whom they have an established relationship. It further accepts that given the technical nature of this area of law and the serious potential negative consequences for the landlord of any errors with a counter-notice, it was reasonable to instruct a Grade A fee earner to deal thoroughly with claims such as the present one when received, as it cannot be known in advance that a claim will be straightforward. The Tenants' point that Mountview already knew its tenants from service charge and ground rent demands is not a relevant one.

24. The tribunal also accepts, as does not appear to be disputed by the Tenants, that the work claimed in the costs breakdown does in principle fall within the terms of sub-sections (a) to (c) of s.60(1).

25. However, the tribunal does consider that it was excessive for a partner to spend 30 minutes on 3 separate occasions on drafting the counter-notice, given that it is very short and straightforward. The tribunal allows a total of 0.8 hours (48 minutes) for this item. Otherwise it

accepts the work and times detailed in the schedule of costs as having been reasonable, from the point of view of Mountview.

26. However the tribunal considers that while it was reasonable for a Grade A fee earner to have done the work which Ms Smallbone carried out (given the risks to the client and importance of getting these matters right), a client would not have considered it reasonable for a Grade A fee earner to have done the preparations for a new lease and negotiations undertaken by Ms Neale and Ms Kashem. This was a very routine lease and the tribunal considers that a client who was paying for this itself would have expected the work to be done by a solicitor of Grade B.

27. In relation to the hourly rates applied, as noted Mountview's solicitors rely on a general statement that these rates are "*entirely consistent with the usual charge out rate for Solicitors in Central London*". They also rely on the fact their rates have been accepted in a number of other FTT cases, although of course such decisions will have been based on the evidence and arguments presented to the tribunal in those particular cases and are not binding as such.

28. This tribunal also takes notice of the fact that on 1 October 2021 HMCTS published revised guideline rates for summary assessment of court costs in England and Wales, by pay band and grade for different parts of the country. As noted above, in *Twinn* the Upper Tribunal said that it is appropriate for the tribunal to take into account these hourly rates. While these new rates had not been published when the work was carried out, the old 2010 published rates which applied at that time were lower.

29. Wallace LLP are in London Band 2 (W1), this not being "*very heavy commercial and corporate work by centrally based London firms*". The guideline rate for a Grade A fee earner in London Band 2 is £373 p.h. and the guideline rate for a Grade B fee earner is £289 p.h.

30. Given that a s.60 assessment is intended to be a reimbursement of costs which the landlord would have considered it reasonable to pay from its own pocket, not an inter partes costs assessment on a standard basis, and given this is intended to be a summary exercise, the tribunal allows rates somewhat higher than these guideline rates, of £400 p.h. for Grade A and £300 for Grade B.

31. The Tenants have not put in dispute Mountview's right to claim VAT on any costs, so (following *Moss* at [39]), VAT will also be allowed.

32. Applying these rates to the time allowed for Ms Smallbone's work at Grade A and for Ms Neale/ Ms Kashem's work at Grade B, the tribunal therefore allows the following:

2.8 hours at £400 p.h.	£1,120
2.9 hours at £300 p.h.	£870
Total	£1,990
VAT	£398
Total including VAT	£2,388

33. The tribunal accordingly determines that a total of £2,388 is payable by the Tenants to Mountview as statutory costs.

Name: Judge N Rushton QC **Date:** 16 November 2021

Appendix: Valuation setting out the tribunal's calculations

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix

Extracts from the Leasehold Reform, Housing and Urban Development Act 1993

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]1 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.

91.— Jurisdiction of tribunals.

(1) Any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by the appropriate tribunal.

(2) Those matters are—

...

(d) the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs;