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CAM/12UE/OLR/2010/0042 and CAM/12UE/0C9/2001/0004

LEASEHOLD VALUATION TRIBUNALS (PROCEDURE) (ENGLAND) REGULATIONS 2003

REGULATION 18

CERTIFICATE OF CORRECTION

I hereby certify that due to a clerical error the name of the solicitor who represented the Applicants was spelt incorrectly in the decision document dated 17th September 20010, which was signed by me.
The correct spelling is Mr Hafiaz.

Signed: D Brown Date: 18th January 2011

D S Brown FRICS MCIArb (Chair)

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Property	: Flats 2a and 5 Chichester Way, Perry, Cambs, PE28 0DR
Applicants	: Ian David Percy (Flat 2a) Leslie Worsencroft (Flat 5)
Represented by	: Mr Hafiaz of Leeds Day
Respondents	: (1) Freehold Securities Limited (2) Chichester Court (Grafham) Limited
Represented by	: Ms Mooney of Stevensons
Case numbers	: CAM/12UE/OLR/2010/0042 CAM/12UE/OC9/2010/0004
Type of Application	:To determine the costs payable on the grant of a new lease (Section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"))
Hearing date	: 7th December 2010
The Tribunal	: D S Brown FRICS MCIArb J R Humphrys FRICS Mrs I Butcher

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DECISION

The reasonable legal costs and disbursements of the Respondents payable by the Applicant pursuant to Section 60 of the 1993 Act are –

<u>Flat 2a</u>	
To the freeholder	£619.14
To the intermediate landlord	£154.78 plus VAT
<u>Flat 5</u>	
To the freeholder	£660.45

STATEMENT OF REASONS

Introduction

1. This dispute arises from the service of a Notice of Claim in respect of each flat under section 42 of the Act. In these circumstances there is a liability on the tenant to pay the landlord's reasonable costs.

The Law

2. It is accepted by the parties that the Initial Notice was served and therefore Section 60 of the 1993 Act is engaged. The Applicant therefore has to pay "*...to the extent that they have been incurred in pursuance of the notice...*" the Respondents' reasonable costs of and incidental to:-
   (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.*

3. Any such costs incurred by a relevant person shall only be regarded as reasonable if and to the extent that they 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 - what is sometimes known as the "indemnity principle" (Section 60(2)).

4. The Tribunal has been provided with a bundle of documents including the Statement of Costs, the list of objections and replies and copies of the Initial Notice, the Counter Notice and the original lease.

The Evidence

<u>General Points</u>.

5. The Respondents' solicitors, Stevensons of Dereham, Norfolk, state that most of the work was undertaken by Louise Uphill, a Grade C solicitor who was admitted in August 2009. Her charge rate was £175 per hour, plus VAT. At the hearing. Ms Mooney agreed with Mr Hafiaz that the relevant guideline cost on an *inter partes* basis in the county court is £146 per hour. She said that the guideline rates almost never cover 100% of the costs accrued and the actual charge to a client will be 20-40% higher. Furthermore, £175 per hour is actually charged to all clients.

6. Part of the work was undertaken by the Principal of the firm whose charge rate is £225 per hour, plus VAT. This is not disputed.

7. For assessing solicitors' costs on an *inter partes* basis in the county court, a Grade A fee earner is a senior solicitor with more than 8 years' post qualification experience in litigation and a Grade B fee earner is a solicitor or legal executive with more than 4 years' post qualification experience in litigation. Higher rates can be allowed to Grade A fee earners for substantial and complex litigation which this is not, in this Tribunal's view. These rates are not mandatory, particularly when one is assessing on an indemnity basis. However, they are helpful as a starting point for assessment.

8. It is our statutory task to assess what is reasonable for a client to pay for fee earners of the relevant grades in a firm based in a Norfolk market town, where the client is expecting to pay the solicitors out of his or her own pocket. The Applicant disputes the rates charged by the Respondent's solicitors and suggests the appropriate rate to be £150 per hour. Mr Hafiaz asserts that leasehold reform work is not specialist work, 10-12 years have passed since the commencement of the Act and the "traps for lawyers" argued by many as justifying the specialist work tag have nearly all been flushed out and are taught on a 6 hour CPD course.

9. In respect of a number of the costs, Stevensons, in a letter to Leeds Day dated 15 October 2010, referred to a decision of an LVT of the Southern Rent Assessment Panel. We made it clear at the beginning of the hearing that we do not consider that decision to be relevant or helpful. This determination is to be on the facts of this case and the work involved with these two Properties, which may have been very different from the extent of work required in the Southern case, and the amounts actually claimed are different.

10. Mr Hafiaz asks us to consider whether a freeholder who is due to receive £4890 on his valuation would allegedly incur costs in the total sum of £1734.99 if he had to pay them himself.

11. He asserts that the work involved is no more complicated than acting for a purchaser on the grant of a new long lease or the purchase of the residue of a long lease, for which charges are typically on a set scale and no more than £800. There are similarities in the time needed and the activities to be undertaken.

12. Furthermore, these were two new lease claims dealt with close together by the same solicitor. There would therefore have been duplication of work in respect of which discount should be applied.

13. He says that, typically, costs charged by solicitors to developers on disposals are £700-800. In this case, the developer is providing volume work to Stevensons and if he were paying the charges himself would drive down the costs, seeking a discount for bulk. The freeholder is a volume ground rent owner. At the hearing, he produced an Official

Search of the Index of Proprietors' Names from the Land Registry, which lists numerous titles for the First Respondent in a variety of locations.

14. Mr Hafiaz claimed that the freeholder is registered for VAT and so VAT on charges to the freeholder is not recoverable from the Applicant. Ms Mooney accepted this point.

15. There is no information from Stevensons as to how time was recorded. Mr Hafiaz had requested that Stevensons provide either the computer printout or the entire file if the time was recorded manually. At the hearing he pointed out that there was no evidence of a valid retainer and so no evidence of what hourly rate had been agreed with the clients. The Directions required the Respondent to provide details of letters sent and telephone calls.

16. Ms Mooney apologised for the lack of detail in respect of the work undertaken. She did not have a breakdown with her but said she could provide it by the afternoon. We pointed out that all relevant documents should have been included in the hearing bundle. The Tribunal was convened at this time in order to make a determination on the documents that had been produced and, in any event, Mr Hafaize would not then have had the opportunity to study any breakdown details or to take instructions from his client. Stevensons are experienced in these matters and were fully aware of the nature of the challenges to their costs claimed. It should have been abundantly clear that the Tribunal would need evidence of the dates and nature of the work undertaken in the light of these challenges. We considered that it would be unreasonable to adjourn the proceedings for production of the breakdown.

17. Ms Mooney confirmed that there was a valid retainer but was not able to produce it. With regard to a discount for bulk, she said that the costs had already been discounted to £1,200 from £1,734.99 on Flat 2a. She accepted that there was some duplication but stressed that each case had to be given proper consideration. These were more complicated cases because of the intermediate interest. Her firm did not want to risk volume conveyancing because each case had to be checked and double checked.

18. Ms Mooney rejected the suggestion that this is not specialist work. She pointed out that *Hague*, one of the standard text books, is 2000 pages long, written by high profile practitioners. She also referred to information on the website of ALEP (the Association of Leasehold Enfranchisement Practitioners), of which Stevensons is a member. In addition, she referred to the fact that Mr Hafiaz's own website mentions specialist landlord and tenant practice conducting property litigation.

19. If the landlord himself was paying, the charge would be the same, she said. On the question of proportionality, if the client does not go to a legal professional he risks selling under value and if he went to an incompetent solicitor the outcome could be drastic.

20. With regard to volume of work, Ms Mooney said that the Land Registry list did not show how many of those titles gave rise to 1993 Act cases. She said Stevensons deal with about 100 such case for this freeholder per year.

21. **Dealing with these preliminary issues first –**

22. **We note that Louise Uphill has only been admitted for just over a year. We accept that the county court Guideline charges are not mandatory and do not specifically relate to this type of work but we regard them as a useful starting point. We do not accept the proposition that this is not specialist work. The provisions for lease extension in the Act are complex and in some cases, procedural error can have very severe consequences. This type of work is not widely undertaken by a majority of solicitors but tends to be limited to firms which specialise in it.**

23. **We consider that a client would not expect to pay £175 per hour for work by a solicitor with so little experience as Ms Uphill and that £150 per hour, plus VAT, is an appropriate rate.**

24. **In view of the above, the lack of evidence of a higher rate agreed with the client is not relevant. There is no evidence of a valid retainer but we accept Ms Mooney's evidence that there is one and, more importantly, there is no dispute that the work has been done and must be paid for.**

25. **We find that the question of proportionality is of little relevance. Once a section 42 notice has been served there is a process that has to be followed and a number of steps that have to be taken. There will be some cases where the level of premium will be low and the legal costs will amount to a considerable percentage of the amount receivable but that is an unfortunate consequence of this legislation.**

26. **We note the agreement that the freeholder is registered for VAT and we therefore find that VAT is not recoverable from the Applicant in respect of the costs charged to the freeholder.**

27. **With regard to Flat 2a, Ms Mooney referred to the fact that a discount from £1,734.99 to £1,200 has been given but this is not actually the case, the discount is to £1,500, being the sum of the costs claimed by the freeholder and the intermediate interest holder. The discount is therefore equivalent to 13.5%. Mr Hafiaz has not indicated what level of discount he considers should apply. We conclude that a client giving a volume of this type of work to one firm, and taking into account the duplication involved in dealing with flats on the same development, would seek a discount of at least 15% and we will apply that percentage.**

Costs under section 60(1)

28. The information given by the Respondent in respect of the costs lacks sufficient detail to enable us to assess what was actually done or when or why in many instances. Using our collective knowledge and experience in these matters, which is extensive, we have determined whether the costs claimed were reasonably incurred in dealing with the specific matters set out in section 60 of the Act.

29. The Applicant disputes the costs claimed for each Property under numerous headings, which we will deal with in turn, following the order in which evidence was taken, namely dealing with Flat 2a first.

Flat 2a

30. Under the heading **Letters and e-mails written and received** the Respondent lists Freeholder Client 11 units, Intermediate Landlord Client 15 units, Tenant's Solicitors 28 units and Valuer 5 units. This is a total of 59 units or nearly 6 hours. Mr Hafiaz says that this seems unnecessarily high and offers respectively 5, 5, 7 and 5 units.

31. **We accept Mr Hafiaz's contention that the total is high. He could have produced evidence of the number of letters received to support his suggested number of units in respect of correspondence with his firm but did not do so. We would point out that no cost is usually allowed for letters received. There is insufficient information for us to consider each type of correspondence individually but in our experience, in the absence of any supporting evidence, nearly 6 hours for this work appears excessive and we find that 30 units or 3 hours is appropriate.**

32. Telephone calls are agreed at 4 units.

33. Under **Documents** the Respondent has listed the following –

34. Perusing and considering Initial Notice 30 minutes. Mr Hafiaz asserts that 10 minutes would be sufficient. Ms Mooney responded at the hearing that 10 minutes would not be long enough. **We agree that 10 minutes is insufficient and find that 20 minutes is appropriate.**

35. Drafting Notice requesting Statutory deposit 15 minutes. Mr Hafiaz contends that this does not fall within section 60. Ms Mooney asserted at the hearing that it is part of the completion process and so falls within subsection (1)(c). Mr Hafiaz responded that it is not part of the completion process, it is a surety for the protection of the landlord and is not forfeited if the tenant does not complete.

36. **Paragraph 2(1) of Schedule 2 to the Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993 provides that the landlord may give to the tenant a notice requiring him to pay a deposit "on account of the premium payable for the lease".**

be closer to 18 minutes. Ms Mooney responded that extra attention was necessary because of the intermediate interest. This lease was drafted before the lease for Flat 5. **A copy of the lease was handed in at the hearing. It is not complex. We find that 30 minutes would be adequate.**

44. Charges in relation to engrossing the lease and completing are agreed on the basis of 30 minutes.

45. **The costs recoverable in respect of Flat 2a are therefore –**

Letters and e-mails	**180 minutes**
Telephone calls	**24 minutes**
Documents	**121 minutes**
Engrossment and completion	**30 minutes**
TOTAL	**355 minutes/5.92 hours**

0.3 hours@ £225 =	**£ 67.50**
5.62 hours @ £150 =	**£843.00**
	£910.50
Less 15% discount	**£773.92**

Apportioning this pro rata with the apportionment applied by the Respondent, this is payable as

To the freeholder	**£619.14**
To the intermediate landlord	**£154.78 plus VAT**

Flat 5

46. The arguments on both sides in respect of Flat 5 are the same as for Flat 2a and need not be repeated.

47. The three differences are that (a) this was the second lease to be prepared on this block and so the time for drafting ought to be less, (b) there is a claim for drafting a default notice and (c) there is no claim for costs in respect of the intermediate landlord.

48. **We find that 25 units would be sufficient time for letters and emails to one client. The cost of reporting to one client on the valuer's report would only be marginally less than to two clients and so we still allow 15 minutes. This is the second lease to be drafted and the time claimed is less than for Flat 2a so we reduce the time to 20 minutes.**

49. With regard to the default notice, the Applicant's solicitors contend that this is not covered by section 60(1). **We disagree. In the event of non-payment of the statutory deposit, section 92 of the Act requires the landlord, before taking enforcement action in the court, to serve a default notice on the tenant. Such a notice is therefore part of the deposit procedure and so incidental to the**

grant of the lease in the same way as requiring a deposit to be paid. However, we find that 6 minutes would be an appropriate time allowance.

50. The breakdown of costs is set out on page 3 of the bundle. As the arguments and our findings are similar, we summarise our determination of the costs payable to the freeholder as follows –

Letters and e-mails	**150 minutes**
Telephone calls (agreed)	**24 minutes**
Documents	**97 minutes**
Estimated costs (agreed)	**37 minutes**
TOTAL	**308 minutes/5.13 hours**

0.1 hours @ £225 =	**£ 22.50**
5.03 hours @ £150 =	**£754.50**
	£777.00
Less 15% discount	**£660.45**

Signed:  **Date:** 17th September 2010

D S Brown FRICS MCIArb (Chair)