FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**BIR/47UE/OC9/2020/0006** **BIR/47UE/OC9/2020/0007**
Properties	:	**1 Treacle Nook, Lyppard Woodgreen, Worcester, WR4 0RQ** **9 Debdale Avenue, Lyppard Woodgreen, Worcester, WR4 0RP**
Applicant	:	**Katie Coomber**
Respondent **Solicitor**	: :	**Brightsplit 4 Limited** **Stevensons Solicitors**
Date of Application	:	**11th June 2019**
Type of Application	:	**Application to determine the costs of the lease extension of the Properties under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993** **Application for costs under rule 13 of the Tribunal procedure (First-Tier tribunal) (Property Chamber) Rules 2013**
Tribunal	:	**Judge JR Morris** **Mr R Bryant-Pearson FRICS**
Date of Decision	:	**7th January 2021**

DECISION

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Covid-19 Pandemic

This determination on the papers has been consented to by the parties. A face-to-face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in accordance with the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the case is to be determined wholly on the papers because it is not reasonably practicable for a hearing, or to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Decision

1. The Tribunal determines that the reasonable Legal Costs of the Respondent payable by the Applicant pursuant to section 60 of the Leasehold Reform and Urban Development Act 1993 in respect of the Lease Extension for 1 Treacle Nook are £1,877.40 including VAT and for 9 Debdale Avenue are £1,877.40 including VAT

2. The Tribunal determines that the reasonable Valuation Costs of the Respondent payable by the Applicant pursuant to section 60 of the Leasehold Reform and Urban Development Act 1993 in respect of the Lease Extension for 1 Treacle Nook are £600.00 including VAT and 9 Debdale Avenue are £600.00 including VAT.

3. The Tribunal makes no order for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Reasons

Application

4. The Applicant applied to the Tribunal on 23rd July 2020 under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") for a determination of the reasonable costs (valuation and legal) under section 60 of the 1993 Act. In addition, the Applicant applied for costs under rule 13 of the Tribunal procedure (First-Tier tribunal) (Property Chamber) Rules 2013.

5. Directions were issued on 30th July 2020 but proceedings were stayed at the Applicant's request because the Applicant had not received a Schedule of Costs from the Landlord. The stay was lifted following a letter from the Applicant dated 17th August 2020, requesting the same. Directions were issued on 19th August 2020.

The Law

6. The relevant law is contained in s60 of the Leasehold Reform, Housing and Urban Development Act 1993 and rule 13 of the Tribunal procedure (First-Tier tribunal) (Property Chamber) Rules 2013 set out in Annex 2 of these Reasons.

Evidence & Submissions

7. Both parties provided detailed Statements of Case which are summarised, précised and paraphrased below.

Legal Costs

Respondent's Schedule of Costs and Justification

8. The Respondent's Solicitor provided a Schedule of Costs as set out in the table below. These costs were said to have been incurred in respect of each case and therefore the total for 1 Treacle Nook is £2,259.00 and for 9 Debdale Avenue is £2,259.00. It was noted that a moiety was applied to B2 in that the total costs claimed are in respect of the negotiations regarding the terms in both leases and therefore the total cost for this item is divided between the two.

	Date	Action (Section A)	Units
1	26.11.19	Attendances on Client, obtaining instructions and advising	5
2	16.12.19	Considering the Lease and office Copy Entries and other relevant documents	4
3	26.11.19	Notices and correspondence regarding deposit	4
4	07.01.20	Considering the validity of Tenant's Notice	4
5	14.01.20 17.01.20	Drafting Counter Notice	5
6	14.01.20	Considering Valuation (1 unit) and discussing the same with the Client (1 unit) and Valuer (2 units)	4
		Total Units	26
A	**Total**	**2.6 x £265.00**	**£689.00**

	Date	Action (Section B)	Units
1	14.01.20	Considering terms of Lease for inclusion in Counter Notice	5
2	March to August 2020	Agreeing new leases and making provisional arrangements for completion – 64 units spent on both matters and making provisional arrangements for completion (50%) – correspondence provided	32
3	17.07.20	Preparing engrossments and check	2
4		Attend to completion - estimated	5
		Total units	
B	**Total**	**4.4 x £265.00**	**£1,166.00**

A	£689.00
B	£1,166.00
Sub Total	£1855.00
VAT @ 20%	£371.00
Land Registry Costs	£9.00
Postages – Special/Signed for (including VAT)	£24.00
Total	**£2,259.00**

Solicitor Undertaking the Work

9. The Respondent's Solicitor stated that Mr Glenn Nigel Stevenson had the conduct of the case and is a solicitor who qualified in 1983. He is a member of the Association of Leasehold Enfranchisement Practitioners and has dealt with approximately 5,000 enfranchisements and lease extensions. His hourly rate is £265.00 as a specialist solicitor.

10. The Respondent's Solicitor submitted that a landlord does not have to choose the cheapest solicitor but only to give such instructions as it would ordinarily give if the landlord were to bear the costs personally. Mr Stevenson has acted for the Respondent since its formation and the Respondent confirms that it would have instructed a solicitor of Mr Stevenson's experience. Passages from the Upper Tribunal cases of *Sinclair Gardens Investments (Kensington) Limited v Wisbey* [2016] UKUT 0203 (LC) [23] & [26] (copy provided) (*Wisbey*) and *Re 68B Maud Road, London E13 0JU* [2013] UKUT 0362 (LC) [24] (copy provided) (*Maud*) were referred to in support.

11. It was added that the Respondent is not registered for VAT and therefore the VAT on the costs incurred by it is recoverable from the Applicant, *Metropolitan Property Realizations Ltd v Moss* [2013] UKUT 0415 (LC) [32] to [41] (Copy provided) (*Moss*).

Section A

12. The Respondent's Solicitor set out a full statement regarding the tasks under Section A which are summarised as follows:

    (1) Check that long lease and parties to lease for service and inclusion in new lease and check Notice of Claim including:
    - Description of Property;
    - Details of Lease and any variations;
    - Return date of at least two months;
    - Service on appropriate freeholder/competent landlord/third parties taking into account any head lease;
    - Whether a previous Notice has been served within last 12 months;
    - Whether lease forfeit;

- Correct signature of the Notice.

(2) Check Land Registry entries to ensure proprietor is tenant and has been qualifying tenant for 2 years and that there are no limitations on extending lease of value;

(3) Service notices requiring deduction of title and deposit;

(4) Instruct Valuer and provide relevant documents;

(5) Receive, read and consider Valuation and report to Landlord;

(6) Draft Counter Notice incorporating valuation and new lease terms (if any) due diligence of particular importance due to effect of invalidity being acceptance of Notice of Claim and inability to amend.

13. The Respondent's Solicitor referred the Tribunal to the Upper Tribunal case of *Wisbey* in particular that it was held:
    - the costs of the Counter Claim are incidental, (a) any investigation reasonably undertaken of the tenant's right to a new lease, (b) any valuation of the tenant's flat, and (c) the grant of a new lease [24];
    - the costs of instructing a valuer [23];
    - the solicitor's consideration of the valuation [25].

    It was also added that it was reasonable for the client landlord to be kept informed and for a charge to be made in doing so.

Section B

14. The Respondent's Solicitor stated that drafting a new lease is not just a question of filling in the names and property on a standard precedent. The drafting will commence with a standard precedent but this must be read and adapted to include specific details and agreed terms taking into account the existing lease, the Land Registry Titles and the Notice of Claim.

15. Copies of the negotiating correspondence was provided. It was submitted that the number of letters generated was exceptional with at least 23 from the Respondent's Solicitors and 25 from the Applicant's Solicitors. Many of the Applicant's Solicitor's letters demanded unnecessary deadlines and several were of themselves unnecessary.

16. The Respondent's Solicitor set out the tasks required for Completion as follows:
    a) Checking lease signed by tenant in an agreed form and properly executed was carried out in Item 2 of Part B;
    b) Checking with the accounts department that the correct money has been received;
    c) Agreeing final apportionment with Client;
    d) Obtaining authority for Client to complete;

e) Agreeing sum to be paid to Client and preparing financial statements;
f) Effecting completion and reporting to Client;
g) Sending a lease to Client;
h) Reporting to tenant's solicitors.

General Points regarding Determination of Section 60 Legal Costs

17. The Respondent's Solicitor also made some general points regarding section 60 costs. The Tribunal was referred to *Moss* in which the point was made that landlord is not a willing participant in granting a new lease and "it is a matter of basic fairness necessary to avoid the statute for becoming penal, that the tenant.... should reimburse the costs necessarily incurred" [9].

18. Reference was also made to [10] where it was said:
"section 60(2) provides a ceiling by reference to the reasonable expectations of a person paying costs from their own pocket; the cost of 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 costs which the tenant is required to pay".

19. The Respondent submitted that it followed that costs are not unreasonable because a tenant subjectively considers them so or subjectively considers that the work could have been carried out in a lesser time or at a lower fee. The test is whether the landlord would have paid the costs charged had the landlord been liable for them personally. It was added that in *Wisbey* this was said to be the only burden of proof that the landlord had to satisfy [30].

Previous Figures Costs Agreed by Tribunals

20. The Respondent's Solicitor submitted that proportionality to the premium is not a relevant factor in respect of a compulsory acquisition. It was stated that £1,250.00 was found to be reasonable for 5 hours work for a non-specialist solicitor in Moss, £2,167,50 plus VAT and £1,699.50 plus VAT in the First-tier Tribunal Decisions of *Woodcock v Legion Properties Ltd* (27th September 2017) and *Hinds v Freehold Securities Ltd* (6th November 2018), respectively. Copies of the decisions were provided.

Applicant's Statement in Response

Item 2 Part B of the Schedule of Costs

21. The Applicant submitted that the costs attributable to the negotiation of the Lease in Item 2 of Part B were unreasonable because they should not have been incurred at all. It was submitted that the negotiations related to terms that were outside section 57 of the 1993 Act. The Applicant states that section 57 intends that a new lease is to be granted on the same terms as the existing lease. In the Applicant's opinion, the Respondent's Solicitor was determined to vary specific

clauses in the existing lease on behalf of the Respondent, beyond what was permitted under section 57, and that this unnecessarily increased the costs.

22. The Applicant referred to section 57(1) and (6) and stated that these provisions made it clear that the new lease should be granted on the same terms as the existing lease.

23. The Applicant stated that the Respondent's Solicitor replied that the section specifically sets out to emphasise that although certain clauses must be included in the new lease, as set out in the Act, the terms of the new lease are a matter of negotiation between the parties.

24. The Applicant said that she did not agree with this and that section 57 was not a general invitation for the landlord to attempt to improve its position in the new lease.

25. Despite this the Respondent has insisted on including in the new leases a new provision at Clause 5.3(ii) which amends Clause 2(i) of the existing Lease which is an obligation for the Applicant Tenant to notify the Respondent Landlord of all underlettings and pay a prescribed fee for doing so ("the new provision"). The Applicant stated that the reference to "rent" in the existing leases is to the rent payable by the tenant not any subtenant. Therefore, the Respondent has no interest in any underletting.

26. The Applicant added that the requirement to inform the Respondent of underlettings is a significant increase in the Applicant's obligations beyond the obligation in the existing lease and may affect the value of the lease on sale.

27. The Applicant stated that the Counter Notice dated 27th January 2020 contained the new provision. The Applicant's Solicitor responded on 6th March 2020 rejecting the new provision. On 16th March 2020 the Applicant received the first drafts of the new Lease from the Respondent's Solicitor which contained the new provision.

28. Due to the coronavirus restrictions imposed on 16th March 2020 the Applicant said that her solicitor was not able to reply until 6th May 2020. An exchange then took place between the Applicant's Solicitor and the Respondent's Solicitor in the course of which the drafts were marked and the new provision crossed through and added respectively.

29. The Applicant said that in the course of exchanges the Applicant's Solicitor asked for clean drafts and requested the marking up be done by tracked electronic copies but the Respondent's Solicitor was only prepared to use pdf or hard copies marked in manuscript.

30. The Applicant referred to what was alleged to be an unnecessary exchange on or around 29th May 2020 in which the Respondent's Solicitor claimed the draft was

deemed approved on 31st March 2020. This was refuted by the Applicant's Solicitor on 3rd June 2020 followed by a letter from the Respondent's Solicitor claiming that the draft of 14th May 2020 had been agreed which was disputed by the Applicant's Solicitor on 9th June 2020.

31. On 16th June 2020 the Applicant's Solicitor proposed a compromise which was, after a further series of letters, agreed. The Applicant said that notwithstanding the agreed compromise the engrossed new leases still contained wording that had not been agreed. The Applicant said that it was not until a letter dated 6th July 2020 stating that if the wording agreed following the compromise was not included in the the engrossment then the Applicant would apply to the Tribunal. The Respondent's Solicitor subsequently provided engrossments with the agreed wording.

32. The Applicant added that the drafts of the new leases also contained errors which required correction and therefore created further correspondence.

33. The Applicant referred to Section 60 stating that if the Respondent was required to pay its own legal fees it would not have instructed its Solicitor to have sought to negotiate the terms at all or would have instructed its Solicitor to agree the terms earlier in the negotiations thereby reducing costs incurred. The Applicant took the view that the quantity of correspondence was excessive.

Item 4 Part B of the Schedule of Costs

34. With regard to Item 4 of Part B of the Schedule of Costs the Applicant submitted that 3 units per Property was more appropriate and referred to the Respondent's Statement of case which detailed the tasks to be carried out (Parties' paragraph lettering retained) and contended that:
    a) Checking lease signed by tenant is in agreed form and properly executed was carried out in Item 2 of Part B;

    there was double counting in respect of the tasks of:
    b) checking with accounts that the correct money has been received;
    d) obtaining authority for Client to complete;
    g) sending a lease to Client;

    because the leases were being dealt with together.

35. The Applicant agreed that individual attention for each Property would be required for the tasks, as itemised in the Respondent's Solicitor's Statement of Case, of:
    c) Agreeing final apportionment with Client;
    e) Agreeing sum to be paid to Client and preparing financial statements;
    f) Effecting completion and reporting to Client;
    h) Reporting to tenant's solicitors.

Generally

36. The Applicant submitted that costs charged in other cases are not comparable as it is not a 'like for like' comparison and in the present case there were two identical leases and yet the costs are reflective of two separate transactions.

Respondent's Solicitor's Reply

37. The Respondent's Solicitor noted that the Applicant had disputed Items 2 and 4 of Section B of the Schedule of Costs.

38. The Respondent's Solicitor referred to the correspondence provided in relation to the negotiation of the new Lease and stated that it had involved 64 units or 6 hours and 22 minutes.

39. In addition, it was said that unnecessary costs were accrued because of the unconventional manner in which the Applicant's Solicitor handled the matter. Nothing was received from the Applicant's Solicitors from 17th March 202 until 5th May 2020 when it was said there was a "crescendo" of correspondence between 5th May and 15th July when the terms of the new Lease were settled.

40. The Respondent's Solicitor submitted that the Respondent was entitled under section 57 to negotiate any new terms it may wish referring to Section 57(6) *"sub sections (1) (5) shall have in effect subject to any agreement between the Landlord and the tenant as to the terms of the new Lease or any agreement collateral thereto..."*

41. The Respondent's Solicitor said that all the terms of the new Lease were agreed three months before the Applicant needed to apply to the Tribunal if the Applicant had wished to seek a determination as to the terms of acquisition. It was submitted that the Applicant's continued objection to the negotiated terms was unjustified as they were agreed well before the deadline for application to the Tribunal.

42. With regard to the costs for completing, the Respondent's Solicitor referred to the list of tasks itemised in the Statement of Case.

<u>Valuation Costs</u>

Respondent's Case

43. The Respondent's Solicitor outlined the stages of the valuation as:
    - The Surveyor obtains and considers the title and lease;
    - Considers the value taking into account current case law and legislation; Considers Valuation comparables;
    - Calculates Premium

    It was said that each valuation takes on average 5 hours which was the case here.

44. The Respondent's Solicitor said that a valuation fee of £650.00 plus VAT had been considered reasonable in many other cases. The valuations were undertaken by an experienced valuer, Mr Steven Whybrow MIRPM, Assoc. RICS.

45. It was submitted that any similarities between the Properties were irrelevant to the valuation. It is not until the expert valuer considers the relevant factors in respect of each Property can it be known whether they are alike.

Applicant's Case

46. The Valuation Costs claimed are £650.00 plus VAT, totalling £780.00.

47. The Applicant submitted that because the Properties are the same in size and layout and within 100 metres of one another, then:
    a) considering the value of each property taking into account the lease, case law and legislation;
    b) considering the valuation comparables; and
    c) calculating the premium.

    need only be done once and applied to both properties. It was submitted that the Applicant was being charged twice for the same work and that a reasonable fee was £250.00 plus VAT.

48. The Applicant also questioned whether the Respondent's Valuer had visited the Properties.

Rule 13 Application

Applicant's Case

49. The Applicant applies for an order for costs under Rule 13 which the Tribunal identifies as being on 3 grounds.

Ground 1 – Unnecessary Negotiations

50. The Applicant reiterated her submission that the costs attributable to the negotiation of the Lease in Item 2 of Part B were unreasonable because they should not have been incurred at all. It was submitted that the negotiations related to terms that were outside section 57 of the 1993 Act. The Applicant states that section 57 intends that a new lease is to be granted on the same terms as the existing lease. In the Applicant's opinion, the Respondent's Solicitor was determined to vary specific clauses in the existing lease on behalf of the Respondent, beyond what was permitted under section 57, and that this unnecessarily increased the costs and therefore was unreasonable behaviour.

Ground 2 – Delayed Completion

51. The Applicant stated that she signed the leases which were sent to the Respondent's Solicitor on 21st July 2020. Although the Company Secretary had signed the Lease only a scanned Director's signature could be obtained and that original signatures are required by the Land Registry. Correspondence followed in which the Respondent's Solicitor said that it was not known when an original signature could be obtained because the Directors were 'shielding' due to the coronavirus. The Applicant questioned the reason for the failure to obtain the Directors' signatures in that she understood that signatures had been obtained for other documents relating to the Respondent. The Applicant said that it appeared completion would not be possible until mid-October 2020 which would be only a month to the deadline of 15th November 2020 when the application would be deemed withdrawn unless an application is made to the Court.

52. The Applicant submitted that the delay was unreasonable.

Ground 3 - Transfer of Freehold Titles & Undertaking re Land Registry Requisitions

53. The Applicant said that the freehold to the Properties had recently been transferred and a copy of the certified transfer was requested from the Respondent's Solicitors on 16th June 2020. A transfer was sent but had to be returned to Respondent's Solicitors to be certified who did not return the certified copy until 10th August 2020. The Applicant said that the Respondent or its Solicitor would not undertake to answer the Land Registry's requisitions on title, if any. The Applicant appears to be concerned that this may cause difficulties in registering the new lease at the Land Registry and so was unreasonable behaviour.

Respondent's Case

Ground 1 – Unnecessary Negotiations

54. The Respondent's Solicitor replied to the Applicant's submission regarding the negotiations, stating that the section specifically sets out to emphasise that although certain clauses must be included in the new lease, as set out in the Act, the terms of the new lease are a matter of negotiation between the parties.

Ground 2 – Delayed Completion

55. The Respondent's Solicitor said it had, since 14th August 2020, held four parts of the new leases with the original signatures of the Company Secretary and one of the Directors and therefore completion could have taken place three months before application need be made to the court to prevent the claim being dismissed.

Ground 3 - Transfer of Freehold Titles & Undertaking re Land Registry Requisitions

56. The Respondent's Solicitor said that a certified transfer was provided less than a month after the terms of acquisition were agreed.

57. The Respondent's Solicitor said that it was unable to give an undertaking to deal with requisitions as it did not know what questions might be raised and there are covenants for title in the proposed two leases.

Decision

<u>Legal Costs</u>

58. The Tribunal read the respective detailed submissions very carefully. In making its determination it also had in mind the cases referred to by the parties as well as:
    - The Upper Tribunal case of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009 with reference to the need for a respondent to explain and substantiate its costs and that the costs should be proportionate to the matter although not the premium.
    - Section 60(2) which states that the costs *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.*

59. The test of reasonableness is essentially objective. However, in determining whether the costs for a particular case are reasonable a tribunal will have in mind a range of factors including the tasks required, the complexity of the matter, the experience of the lawyer, the hourly rate, the time taken. It will also take into account past decisions in respect to legal principles as well as the knowledge and experience of its members. The amount of costs that have been determined by a tribunal must be seen in context as illustrative of the principles applied in the case.

60. The Tribunal noted that an hourly rate was applied and not a fixed fee. The Applicant accepted the hourly rate of £260.00.

61. The Applicant does not challenge the costs charged for the work identified in Items 1 to 6 of Part A of the Schedule of Costs.

62. The Applicant does not challenge the costs charged for Item 1, "Considering terms of Lease for inclusion in Counter Notice" or Item 4, "Preparing Engrossments and check" in Part B of the Schedule of Costs.

63. However, the Applicant does take issue with Items 2 and 3 of Part B of the Schedule of Costs. Item 2 includes the drafting of the new lease and negotiating any terms, in order to finalise the agreed form and the estimated costs for Item 3,

"Attending to Completion". The Tribunal found that both Items are chargeable under Section 60(1)(c) of the 1993 Act, subject to the test of reasonableness.

64. It appears to the Tribunal that the Applicant has two arguments with regard to Item 2 of Part B. Firstly, it is submitted that the costs attributable to the negotiation of the Lease in Item 2 of Part B were unreasonable because they should not have been incurred at all. It was submitted that the negotiations related to terms that were outside section 57 of the 1993 Act. Secondly, that if the Respondent was required to pay its own legal fees it would not have instructed its Solicitor to have sought to negotiate the terms at all or would have instructed its Solicitor to agree the terms earlier in the negotiations thereby reducing costs incurred.

65. The Tribunal considered the first submission of the Applicant which is that the terms which were negotiated were outside section 57. The Applicant provides a full argument in the Statement of Case in support of the submission. The Applicant states that section 57 intends that a new lease is to be granted on the same terms as the existing lease. In the Applicant's opinion, the Respondent's Solicitor was determined to vary specific clauses in the existing lease on behalf of the Respondent, beyond what was permitted under section 57, and that this unnecessarily increased the costs. The Respondent replied that the section specifically sets out to emphasise that although certain clauses must be included in the new lease, as set out in the Act, the terms of the new lease are a matter of negotiation between the parties.

66. The Tribunal is of the opinion that if negotiations in respect of the terms of the new lease are entered into, then, on the face of it, the landlord's costs of these negotiations are within section 60. If the Applicant considered that the Respondent was seeking to negotiate terms that are beyond the claim for a new lease or that the Respondent sought to vary terms that the Applicant contends are non-negotiable in the context of a claim for a new lease then, in the event that agreement cannot be reached on the point, the Applicant should have applied to the Tribunal for a determination as to the terms of the new lease under section 48 and section 91 (2)(a)(ii) of the 1993 Act. It is in the course of those proceedings that the issues as to the correct interpretation of section 57 and whether the Respondent was entitled to put forward certain amendments should have been addressed. However, once the negotiations have taken place and the lease is agreed it is no longer open to a party to apply to the tribunal to determine those terms.

67. The Tribunal found that the parties engaged in negotiations and the terms were agreed. The Tribunal therefore has no jurisdiction to determine the terms of the new Lease. The present Application is for a determination as to the reasonableness of the landlord's costs incurred in respect of the claim under section 60 and section 91(2)(d) of the 1993 Act. To make a determination as to whether terms negotiated and agreed by the parties were or were not within the provisions of section 57 with a view to determining that the costs were not

reasonable would in effect be to revisit the terms of the lease which have already been agreed. In the opinion of the Tribunal this would be an abuse of process.

68. Therefore, having found that the negotiations were in respect of the terms of the new lease and that terms are agreed the Tribunal finds that the landlord's costs of these negotiations are within section 60 of the 1993 Act.

69. The Tribunal then considered the second submission of the Applicant that if the Respondent was required to pay its own legal fees it would not have instructed its Solicitor to have sought to negotiate the terms at all or would have instructed its Solicitor to agree the terms earlier in the negotiations thereby reducing costs incurred. The Applicant submits that if the Respondent had to pay its own costs it would have considered that 17 units is a reasonable allowance for negotiating and not 32 as charged.

70. On the balance of probabilities, the Respondent would have taken advice and instructed its Solicitor to negotiate accordingly. Without evidence it is not appropriate to consider that the Respondent's Solicitor acted other than in accordance with instructions. The Tribunal can only consider whether the number of units charged in respect of the negotiations based upon the evidence submitted was reasonable.

71. From the description of tasks in the Respondent's Solicitor's Statement of case and the Schedule of Costs, Item 2 of Part B includes drafting of the new lease, negotiating any terms and finalising the agreed form. No time sheet has been provided for Item 2 but the work may be divided into two parts: 1) the drafting of the new lease and 2) engaging in negotiating correspondence in order to finalise its terms.

72. The two leases appear to be similar and will probably have been drafted in tandem with differences being checked between the new leases and with the existing leases. Taking into account the range of factors referred to above, the drafting of the two new leases including taking instructions regarding the negotiations is determined to be in the region of an hour or 10 units for both, which applying a moiety is half an hour or 5 units each.

73. The Respondent provided copies of the correspondence between the parties in respect of the negotiations. The Tribunal noted that the Respondent said in the Statement of Case that 25 letters had been received from the Applicant's Solicitor. Incoming correspondence is generally not chargeable as the time taken to read it is generally covered by the time taken to reply and the Tribunal found that the Applicant's Solicitor's letters were not of such length or complexity to warrant a charge. The Respondent's Solicitor stated in the Statement of Case that it had sent 23 letters in the course of negotiations relating to the proposed amendments which apply to both leases and the Tribunal confirms this from the copies received. All of these letters are relatively short and some are repetitive. They reject proposals, seek further information, accept proposals or acknowledge

receipt of letters from the Applicant's solicitors. The Tribunal, taking into account the contents of the letters allocates 22 units to the correspondence. The Tribunal is of the opinion that in making its response the Respondent's Solicitor would need some further consideration of the draft Lease and also to refer to the Client by letter, email or telephone. For this an allowance of a further 8 units is given.

74. Therefore, the total for drafting and negotiating the amendments to the two leases is determined to be 40 units which are divided equally between the two properties. The Tribunal therefore determines that a reasonable charge for Item 2 of Part B is 20 units or 2 hours at a cost of £520.00 per Property.

75. The Tribunal then considered Item 4 of Part B of the Schedule of Costs which is "Attend to completion – estimated" for which 5 units have been allocated for each Property.

76. The Tribunal considered the Applicant's submission that not some of the tasks could be dealt with collectively in respect of both leases and others individually for each lease so reducing the time taken to 3 units for each. The Tribunal found that notwithstanding the similarity between the leases all the tasks require individual attention in this instance and half an hour or 5 units for each lease does not appear unreasonable. The Tribunal therefore determines the costs for Item 4 of Part B of 5 units or half an hour at a cost of £132.50 per Property to be reasonable.

77. The reasonable costs for Section B are therefore determined to be:

	Date	**Action (Section B)**	**Units**
1	14.01.20	Considering terms of Lease for inclusion in Counter Notice	5
2	March to August 2020	Agreeing new leases and making provisional arrangements for completion – 40 units spent on both matters and making provisional arrangements for completion (50%) – correspondence provided	20
3	17.07.20	Preparing engrossments and check	2
4		Attend to completion - estimated	5
		Total units	32
B	**Total**	**3.2 x £265.00**	**£848.00**

78. The reasonable total legal costs are therefore determined to be:

A	£689.00
B	£848.00
Sub Total	£1,537.00
VAT @ 20%	£307.40
Land Registry Costs	£9.00
Postages – Special/Signed for (including VAT)	£24.00
Total	**£1,877.40**

79. The Tribunal determines that the reasonable Legal Costs of the Respondent payable by the Applicant pursuant to section 60 of the Leasehold Reform and Urban Development Act 1993 are £1,877.40 including VAT.

Valuation Costs

80. The Tribunal considered the Valuation Costs. These costs will include the time taken to:
    - Receive instructions from Client or Client's Solicitor;
    - Obtain and consider the title and lease;
    - Consider the value
    - Arrange & make property inspections;
    - Undertake market research to establish property values and consider comparable property values;
    - Calculate the premium taking into account current case law and legislation
    - Report to Client and Client's solicitor.

81. The fee or hourly rate:
    - Reflects the knowledge and expertise of the valuer and includes time taken in research valuation practice and law.
    - Includes an allowance for administrative work such as diarising and internal communication and for overheads such as professional insurance.

    Therefore, there is an optimum amount below which a fee would not be cost effective.

82. The Tribunal considered the Applicant's submissions.
    - Firstly, the Tribunal found that there was no evidence adduced by the Applicant to show that the Valuer had not inspected the Properties.
    - Secondly, the fact that the two properties were in close proximity means that the Valuer is only travelling to the area once. The fees charged are inclusive of travelling costs and where the instructions relate to two properties to be valued the overall charge should reflect the proximity, or otherwise, of the properties inspected on a fixed fee basis.
    - Thirdly, the fact that the Properties are of a similar size and layout does not preclude the necessity of making an inspection and a calculation of the value of the premium specific to the Property.
    - Fourthly, the fact that the Properties are in close proximity and of a similar size and layout means that the comparable information would only have to be researched once and would be applicable to both properties.
    - Fifthly, no evidence has been adduced by the Applicant for the fee of £250.00 per Property as being reasonable.

83. Taking the above into account the Tribunal considered the Valuer's Fees were on the high side for two properties being valued at the same time, in close proximity and of the same size, layout, age etc. Therefore, the Tribunal determined that, in the knowledge and experience of its members, taking into account the tasks and

matters to be included in the fee, an overall sum for both valuation of £1,000 plus Vat was reasonable. The Tribunal therefore determined that a fee of £600.00 including VAT for each Property is reasonable.

Rule 13 Application

84. The Tribunal starts from a position that its jurisdiction is one in which costs are generally not awarded. The only exception being where a party has acted unreasonably. The Civil Procedure Rules do not apply to tribunals including the provisions relating to cost.

85. In relation to an Application under Rule 13 a tribunal applies the three-stage test in *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander; Ms Shelley Sinclair v 231 Sussex Gardens Right to Manage Limited; Mr Raymond Henry Stone v 54 Hogarth Road, London SW5 Management Limited* [2016] UKUT 290 (LC), LRX/90/2015, LRX/99/2015, LRX/88/2015 considering:
    (i) Whether the Respondent had acted unreasonably, applying an objective standard;
    (ii) If unreasonable conduct is found, whether an order for costs should be made or not;
    (iii) If so, what should the terms of the order be?

86. The Tribunal also took into account the meaning of "unreasonable" in *Ridehalgh v Horsefield* [1994] Ch. 205 which dealt with a wasted costs order, the principles of which we consider apply in this case:

    "Unreasonable" means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgement, but it is not unreasonable.

87. Before considering whether a party has acted unreasonably a tribunal must first determine whether the application for costs comes within rule 13. Rule 13 states that a tribunal may make an order in respect of costs only if a person has acted unreasonably in bringing, defending or conducting proceedings.

88. The Tribunal considered each ground submitted by the Applicant in which it was alleged that the Respondent had acted unreasonably.

89. Ground 1 was that the negotiations instigated by the Respondent related to terms of acquisition that were outside section 57 of the 1993 Act and so were unnecessary and unreasonable. The Tribunal found that where for any reason the parties to a claim for a new lease under the 1993 Act cannot agree the terms of acquisition then an application can be made to a tribunal under section 48 and section 91 (2)(a)(ii) of the 1993 Act for a determination of the terms. In this instance no application was made. As no application was made then negotiations were not part of *bringing, defending or conducting proceedings*. If the Applicant considered the negotiations related to terms that should not be part of the new lease then the remedy was to commence under section 48 and section 91 (2)(a)(ii) of the 1993 Act.

90. Ground 2 was that the Respondent had unreasonably delayed completion by failing to have the new leases signed and delivered. Section 48(3) of the 1993 Act states that where the landlord has served a counter-notice all the terms of acquisition have been agreed but a new lease has not been entered into two months from the date of such agreement either the tenant or the landlord may apply to the court which may make such order as it thinks fit. Therefore, if the Respondent fails to complete the Applicant's remedy is to commence proceedings under section 48(3) section 90(1) of the 1993 Act. Any alleged unreasonableness on behalf of a party will be dealt with by the court. So far as the Tribunal is aware these proceedings have not been commenced and if they had been, they are reserved to the court (in this case the County Court) and not within the jurisdiction of the Tribunal.

91. Ground 3 was that the Respondent had failed to provide a certified copy of the recent transfer of the freehold title to the Properties and would not undertake to answer the Land Registry's requisitions on title, if any. The Applicant appears to be concerned that this may cause difficulties in registering the new lease at the Land Registry and so was unreasonable behaviour.

92. Since the Land Registration Act 2002 title is obtained by registration as opposed to title being obtained by documentation and then registered. Therefore, in the Tribunal's opinion an alleged failure by the landlord to provide documents or information enabling the registration of title is remedied by proceedings under section 48(3) and section 90(1) of the 1993 Act. As stated above any alleged unreasonableness on behalf of a party will be dealt with by the court and so far as the Tribunal is aware these proceedings have not been commenced and not within the jurisdiction of the Tribunal.

93. The alleged unreasonableness of Ground 1 related to proceedings under section 48 and section 91 (2)(a)(ii) of the 1993 Act which were never commenced. The alleged unreasonableness of Ground 2 and 3 related to potential proceedings under section 48(3) and section 90(1) which are not within the jurisdiction of the Tribunal. The Tribunal finds that these proceedings are limited to determining the reasonableness of the landlord's costs incurred in respect of the claim under section 60 and section 91(2)(d) of the 1993 Act. None of the grounds for

unreasonableness relate to these proceedings therefore the Tribunal determines that the Respondent has not *acted unreasonably in bringing, defending or conducting proceedings* and makes no order under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for costs.

Judge JR Morris

Annex 1 – Right of Appeal

1. 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.

2. 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.

3. 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.

4. 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.

Annex 2 – The Law

Section 48 of the Leasehold Reform and Housing and Urban Development Act 1993

Applications where terms in dispute or failure to enter into new lease.

(1) Where the landlord has given the tenant—

(a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or

(b) a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, the appropriate tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.

(3) Where—

(a) the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and

(b) all the terms of acquisition have been either agreed between those persons or determined by the appropriate tribunal under subsection (1),

but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.

(4) Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).

(5) Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).

(6) For the purposes of this section the appropriate period is—

(a) where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or

(b) where all or any of those terms have been determined by the appropriate tribunal under subsection (1)—

(i) the period of two months beginning with the date when the decision of the tribunal under subsection (1) becomes final, or
(ii) such other period as may have been fixed by the tribunal when making its determination.

(7) In this Chapter "the terms of acquisition", in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.

Section 60 of the Leasehold Reform and Housing and Urban Development Act 1993

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 a leasehold valuation 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.

Section 90 of the Leasehold Reform and Housing and Urban Development Act 1993

Jurisdiction of county courts.

(1) Any jurisdiction expressed to be conferred on the court by this Part shall be exercised by the county court.

Section 91 of the Leasehold Reform and Housing and Urban Development Act 1993

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—
- (a) the terms of acquisition relating to—
  - (i) any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or
  - (ii) any new lease which is to be granted to a tenant in pursuance of Chapter II,

  including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;
- (b) the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;
- (c) the amount of any payment falling to be made by virtue of section 18(2);
- (ca) the amount of any compensation payable under section 37A;
- (cb) the amount of any compensation payable under section 61A;
- (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; and
- (e) the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.

(3) ....

(4) ....

(5) ....

(6) ....

(7) ....

(8) ....

(9) The appropriate tribunal may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.

(10) ....

(11) In this section—
"the nominee purchaser" and "the participating tenants" have the same meaning as in Chapter I;
"the terms of acquisition" shall be construed in accordance with section 24(8) or section 48(7), as appropriate;
...

(12) For the purposes of this section, "appropriate tribunal" means—
 (a) in relation to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
 (b) in relation to property in Wales, a leasehold valuation tribunal.

Rule 13 of the Tribunal procedure (First-Tier tribunal) (Property Chamber) Rules 2013

Orders for costs, reimbursement of fees and interest on costs

(1) The Tribunal may make an order in respect of costs only—
 (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
  (i) ....
  (ii) a residential property case, or
  (iii) a leasehold case; or
  (iv) ....

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—
 (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—
(a) summary assessment by the Tribunal;
(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the "receiving person");
(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(15), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(16) and the County Court (Interest on Judgment Debts) Order 1991(17) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

Section 29 Tribunals, Courts and Enforcement Act 2007

Costs or expenses

(1) The costs of and incidental to—
(a) all proceedings in the First-tier Tribunal, and
(b) all proceedings in the Upper Tribunal,
shall be in the discretion of the Tribunal in which the proceedings take place.

(2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.

(3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.

(4) In any proceedings mentioned in subsection (1), the relevant Tribunal may—
(a) disallow, or
(b) (as the case may be) order the legal or other representative concerned to meet,

the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.

(5) In subsection (4) "wasted costs" means any costs incurred by a party—
(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or
(b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.

(6) In this section "legal or other representative", in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf.

(7) In the application of this section in relation to Scotland, any reference in this section to costs is to be read as a reference to expenses.