		FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case reference	**:**	**LON/00AB/OC9/2021/0034**
HMCTS code	**:**	**V: CVPREMOTE**
Property	**:**	**Flat F 43 The Drive Ilford IG1 3HB**
Applicant	**:**	**A A Minhas**
Representative	**:**	**In person**
Respondents	**:**	**S M Mostafavi, L M Lee, B C Kainth and B S Zwanay**
Representative	**:**	**S M Mostafavi**
Type of application	**:**	**Costs – payable by the applicant under s.60(1) Leasehold Reform, Housing and Urban Development Act 1993 (the '1993 Act')**
Tribunal members	**:**	**Judge Pittaway Mr A Harris LLM FRICS FCIArb**
Date of decision	**:**	**21 July 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing. The form of remote hearing was V: SKYPEREMOTE. Mr Mostafavi joined the hearing by telephone. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

The documents that the tribunal were referred to are in a bundle of 24 pages. The Tribunal also had before it a copy of the Directions issued by the Tribunal dated 5 March 2021.

At the hearing the Tribunal heard evidence and submissions from Mr Minhas and from Mr Mostafavi.

The decisions made and reasons are set out below.

Decisions of the tribunal

The tribunal determines that the amount of costs payable by the applicant are

- Fees under section 60 (1) (a) and (c) of the 1993 Act £1800 inclusive of VAT
- Fees under section 60 (1) (b) of the 1993 Act £1390 inclusive of VAT

Background

(1) The applicant leaseholder seeks an order under section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (the "**1993 Act**") as to the amount of costs payable in connection with the grant to it of a new lease of Flat F 43 The Drive Ilford IG1 3HB (the '**property**').

(2) Section 60 of the 1993 Act provides that

> "(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.

(5)A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before the appropriate tribunal incurs in connection with the proceedings.

(6)In this section "relevant person", in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease."

(3) By Directions dated 5 March 2021, the Respondent landlord was directed to provide the applicant by 19 March 2021 a schedule of costs sufficient for summary assessment, invoices substantiating the costs and any other documents relied on. Cadogan (Europe) Limited ('**Cadogan**') on behalf of the Respondent provided this information to Paul Stevens of Thirsk Winton LLP, the Applicant's then solicitor, on 18 March 2021.

(4) The Directions provided for the applicant to provide a statement in response by 9 April 2021. This the Applicant did by e mail to 'Cadogan Office' on 9 April 2021.

(5) The Directions provided for the Respondent to send the Applicant a statement in response to the Applicant's statement by 23 April 2021. This response was sent directly to the Applicant by e mail on 13 July 2021. It was an unsigned statement in the name of the 'Respondent' (sic).

Statements of case, evidence and submissions

1. On 18 March 2021 Cadogan provided

(a) A schedule of costs in the sum of £5,197.50 incurred by Cadogan for the period from 25 November 2019 to 23 February 2021 together with a further charge to be incurred of £396 in connection with obtaining certificates from the Respondents to allow the new lease to be registered at the Land Registry. This stated that all the costs had been incurred by a 'Partner', identified as the 'Partner-Litigation (Kimberley Vanderspar)'.

(b) An interim invoice from Cadogan addressed to the Respondents dated 10 December 2019 for costs of £1,500.

(c) An invoice from Maunder Taylor, chartered surveyors dated 13 July 2020 for £1200 plus VAT, with a breakdown of the fees.

2. The Applicant's statement in response of 9 April 2021

(a) Queried the increase in the surveyor's fees from £1390 in the completion statement to £1440. The Applicant pointed out that the breakdown included a charge for reading his valuer's report and this was not provided until October 2020, after the date of the surveyor's invoice.

(b) Queried the increase in legal fees from £2,773 in the completion statement to £5,197.50

(c) Queried the surveyor's hourly rate of £500 per hour, submitting that it should be £200 per hour, and comparing the charge to that of the Applicant's own surveyor of £400 plus VAT

(d) Queried the solicitor's charge out rate of £495 per hour submitting that on the basis of telephone enquiries he had made these should be in the region of £200-£300 per hour.

3. The Respondent's statement in reply dated 13 July 2021 submitted that

(a) The Tribunal should only consider the hourly rates in its determination as the Applicant had not raised any issue of the amount of time spent by either the solicitor or the surveyor.

(b) The breakdown of the legal fees was accurate. The lower figure of £2,773 set out in the completion statement had been a discounted figure and that as the Applicant had made the costs application the Respondent was seeking its undiscounted legal costs.

(c) With reference to section 60 of the 1993 Act the costs sought are costs that the Respondent would have incurred if it had been personally liable,

(d) The charge out rate of £495 was reasonable as it was appropriate to involve a partner given the complexity of the 1993 Act, which complexity also justified the length of time (10 ½ hours) spent by the Respondents' solicitors.

(e) The valuer's fees were reasonable when considered in the context of the usual fees claimed by valuers in Central London.

(f) The Respondents' solicitors had been acting for the Respondent for many years dealing with enfranchisement matters and their charge out rates are consistent with the usual charge out rate for solicitors in Central London. The Respondent referred the Tribunal to the decision in *Wraith v Sheffield Forgemasters Ltd; Truscott v Truscott [1998] 1 WLR 132* which held that a party has the right to choose its own legal representative and to *Daejan Investments Limited v Parkside Limited* for authority for the proposition that it is reasonable for the Respondent to use a fee earner with relevant experience.

4. At the hearing Mr Minhas drew the tribunal's attention to the fact that he had only received the Respondent's reply five days before the hearing and requested that it be disregarded. In response Mr Mostafavi stated that the delay was because Mr Stevens, the Applicant's solicitor, had left the firm Thirsk Winton LLP.

5. Mr Minhas submitted that not all the items in the schedule of costs from Cadogan related to costs that could be recovered under section 60 of the 1993 Act, that they had been incurred by Cadogan who are not solicitors but property consultants. He submitted that a charge out rate of £495 per hour was very high for a solicitor who qualified in 2015, submitting that £300 per hour would be more reasonable. As for the valuer's invoice he told the tribunal that in a conversation with Ross Maunder Taylor he had been told that that firm's charge out rate was £200 per hour.

6. Mr Minhas gave evidence that Cadogan had refused to tell him the name of the surveyor or solicitor dealing with the matter until he had made the application in respect of the costs. He confirmed that he had sent his solicitors the legal fees requested in the completion statement of £2,773 but he had never considered this to be a reasonable amount. He stated that some of the e mails referred to in Cadogan's schedule of costs were due to there being four freeholders.

7. At the hearing Mr Mostafavi explained that Cadogan were property consultants, a relatively new company, and that Ms Vanderspar was an in-house solicitor, or alternatively that the work was out-sourced to her. He considered her charge-out rate of £495 to be reasonable given that she had trained at a City firm where she would be charged out at more than that. The Respondents had used Cadogan, or a predecessor company, for their enfranchisement cases as a cost saving measure. He compared her charge out rate to that of Wallace LLP. Mr Mostafavi explained that the reason the completion statement named Mason & Co, a Manchester firm of solicitors, as the Solicitors to whom the completion monies should be sent was because Cadogan used them as a source of a client account for the purposes of receiving client money. On being further questioned by the Tribunal as to the arrangement with Cadogan he stated that he did not know how the process worked.

8. Mr Mostafavi explained that the delay in sending the Respondents' response to the Applicant's statement was due to Mr Stevens having left Thirsk & Wilson LLP. (This was disputed by Mr Minhas who stated that the firm forwarded to him all e mails in relation to this matter and he had received nothing from them.)

9. As to the difference between the surveyor's fees in the completion statement and those invoiced on 13 July 2020 Mr Mostafavi explained that the fees in the completion statement were an estimate.

Reasons for the tribunal's decision

10. The Tribunal have difficulty in accepting Mr Mostafavi's explanation for the response to the Applicant's statement only having been delivered to him five days before the hearing. If it had become clear to Cadogan that its e mails to Mr Stevens were no longer reaching him it would have been in order for it to contact Mr Minhas directly to establish to whom the response should have been sent. They did not do so. Mr Minhas invited the tribunal to have no regard to the response. The Tribunal have not done that but have noted its very late delivery and have taken that into account when making its determination.

11. The tribunal finds the evidence provided by Cadogan and Mr Mostafavi to be inconsistent and unreliable. In particular

    (a) Cadogan's statement of costs starts in February 2019. Its interim invoice to the Respondents is dated 10 December 2019. Records at Companies House show that Cadogan was only incorporated on 17 January 2020.

    (b) Cadogan's description of Ms Vanderspar as a 'partner' when she was either an in house solicitor or undertaking outsourced work. There was no evidence that she is a partner in a firm of solicitors, or that she had expertise in leasehold enfranchisement.

    (c) Mr Mostafavi explanation of Ms Vanderspar's role at Cadogan. He described her as being an 'in-house solicitor' but also referred to Cadogan outsourcing the Respondents' legal work.

    (d) Mr Mostafavi did not provide the Tribunal with a satisfactory explanation as to the involvement of Mason & Co, a firm of solicitors in Manchester, to whom the premium for the new lease was sent.

12. The Tribunal accept Mr Mostafavi's submissions that a party has the right to choose its own legal representative and that it is reasonable for the Respondent to use a fee earner with relevant experience. However there is no evidence before the Tribunal that it was Ms Vanderspar who undertook the work or as to Ms Vanderspar's relevant experience. Ms Vanderspar's previous employment at a city firm of solicitors does not justify a charge out rate compatible with that charged by partners in firms of solicitors specializing in leasehold enfranchisement. The Tribunal note that she was only admitted in 2015. There was no evidence before the tribunal to substantiate the charge out rate of £495 per hour claimed for Ms Vanderspar.

13. Mr Minhas challenged some of the costs incurred by Cadogan as not being legal costs. Section 60 of the 1993 Act is not limited to legal costs. It

entitles the Respondents to recover reasonable costs incurred in (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; and (c)the grant of a new lease under that section;

14. Not all the costs claimed meet the test of reasonableness set out in section 60(2). Any costs incurred by the relevant person in respect of professional services rendered are to be regarded as reasonable only 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. The existence of a statement of costs or an invoice may indicate that the Respondents may have paid them, but of itself that does not make the charges reasonable.

15. On the basis of its own knowledge and experience as to the length of time spent on similar transactions, noting the date of incorporation of Cadogan, and having listened to the parties the Tribunal determine that reasonable costs to be paid to the Respondents in respect of Cadogan's fees would be £1800.

16. Insofar as the valuer's fees are concerned the Tribunal note the lower invoice submitted by the Applicant's valuer but have no evidence before it as to what work the Applicant's valuer undertook for that fee. The Tribunal do not understand how the sum of £1390 for the Respondents' valuers' fees, as set out in the completion statement, was reached, but note it is in the region of the invoice subsequently submitted by Maunder Taylor, with an accompanying breakdown. The hourly charge out rate in the breakdown with the Maunder Taylor invoice is high, and the Tribunal notes the hearsay evidence provided by the Applicant that Maunder Taylor may undertake valuations at a lower hourly rate, but the high charge out rate may reflect the expertise of the person who undertook the work with a commensurate reduction in the amount spent on the various aspects of the transaction.

17. The Tribunal determines that reasonable costs to be paid to the Respondents in respect of the valuation of the property are £1390. From its knowledge and experience this is within the range of valuation fees charged for valuations obtained for the purpose of fixing the premium for a new lease. This is clearly a sum that the Respondents were prepared to accept from the Applicant by way of valuer's fees, evidenced by its inclusion in the completion statement, and the Tribunal see no reason why the fee should have increased from this amount.

Name: Judge Pittaway **Date:** 21 July 2021

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).