



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

**Case Reference** : **LON/00AC/OC9/2021/0208**

**Property** : **19 West Heath Court, North End Road,  
London NW11**

**Applicant** : **Fahima Jan**  
**Representative** : **Colin Hurst**

**Respondent** : **Deritend Investments ( Birkdale)  
Limited**  
**Representative** : **Wallace LLP**

**Type of Application** : **Application to determine costs payable  
under s.60 of LRHUDA 1993**

**Tribunal Members** : **Judge Shepherd  
Kevin Ridgway MRICS**

**Date of Decision** : **11<sup>th</sup> January 2022**

**DECISION**

The application is dismissed. The Tribunal will not interfere with the legal costs claimed.

**Reasons**

1. In this case the Applicant, Fahima Jan (“the Applicant”) has asked the tribunal to determine the costs payable under s. 60 Leasehold Reform, Housing and Urban Development Act 1993 (“The Act”).
2. The Respondents to this application are Deritend Investments (Birkdale) Limited (“the Respondents”).
3. The sums challenged covered work carried out by the Respondent in preparing and administering an extension of the lease pursuant to the Act. The Applicant was seeking to extend the lease of premises at 19 West Heath Court, North End Road, London NW11 (the premises). Nothing turns on the history of this lease extension and therefore the facts will not be rehearsed here.
4. The Respondents provided a breakdown of the legal fees incurred. The firm they use for leasehold enfranchisement cases are Wallace LLP. Their total fee was £3324 plus vat. All of the solicitors involved in the work have been qualified for at least 16 years and their job titles suggest that they are specialists in the field of enfranchisement.

#### *Challenge to solicitor’s fees*

5. In her statement of case the Applicant does not challenge the amount of time spent by the solicitors but does challenge the hourly rates. In simple terms it is alleged that the work was routine and lower grade solicitors could have done more of the work with a Grade A solicitor performing an overseeing role.
6. The Applicant relies particularly on the Solicitors Guideline Hourly Rates updated on 1<sup>st</sup> October 2021 issued by HM Courts and Tribunals Service for the purposes of carrying out summary assessments of costs. The Applicant

says that applying these guidelines to the present case the hourly rates would be reduced because the work could and should be performed by lower grade solicitors. In addition it is said that a discount on fees could have been achieved based on the negotiating strength of the lessors. The Applicant offers £2054 plus vat.

7. In support of this offer the Applicant relies on two invoices from different legal firms, Winkworth Sherwood and PDC Law for lease extension work. The Tribunal cannot safely rely on these as like for like comparables because there is no detail as to the cases concerned or work involved. Similarly the completion statement is of limited value without further information.

### *Response to challenge*

8. The Respondents unsurprisingly say that the costs are reasonable and payable pursuant to s.60 (see below). They detail the work carried out by solicitors involved all of which are Grade A fee earners. They cite cases in which their solicitors' fees have been approved by the FTT. Whilst this evidence is instructive each case must be determined on its own merit.
9. The Respondents state that their solicitors have been acting for them for many years in this specialist area of work. They emphasise that enfranchisement work is complex and not routine and it is important that the work is done properly to avoid the risk of adverse consequences. They say that the County Court Guideline Hourly Rates are not applicable in relation to this type of work and even if they were the applicable rates would be London 1 Band.

### **The Law**

10. Section 60 of the Act states the following:

*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]<sup>1</sup> 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*

## **Determination**

11. The Tribunal accepts the arguments put forward by the Respondents. The starting point is s.60 itself and in particular sub (2). The Respondents clearly consider that their solicitors can be relied upon to carry out enfranchisement work which is not without considerable risk if mistakes are made. In these circumstances where a relationship has built up over a number of years between specialist solicitors and their clients it would be difficult to come to any view other than the Respondents would consider their solicitors costs to be reasonable even if they were the party incurring the cost without any recourse to the leaseholder.
12. In addition, the Tribunal accepts that the work involved in an enfranchisement case is complex with particular risk attached such that the County Court Guideline Rates provided for the purpose of summary assessment by judges are of limited value. Finally, the costs themselves are reasonable. The suggestion that the Respondents should have obtained a discount is made without any evidential basis.
13. In these circumstances there is no reason for the Tribunal to interfere with the legal costs claimed and the application is therefore dismissed.

**Judge Shepherd**

**11<sup>th</sup> January 2022**

## ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.