



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

HMCTS CODE	PAPER REMOTE
Case reference	: LON/00AN/OC9/2022/1;2;3;4;5;9;10;14;19;20;28
Property	: Properties at Windsor Way, Brook Green, London W14 0UE
Applicant	: Various leaseholders of the properties
Representative	: Penningtons Manches Cooper PLC
Respondent	: Deansgate Nominees Limited (1) Windsor Way Management Company Limited (2)
Representative	: Wallace LLP solicitors for first respondent Gregsons Solicitors for the second respondent
Type of application	: An application under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 for a determination as to costs to be paid under s60 (1) of the Act
Tribunal members	: Tribunal Judge Dutton Miss M Krisko BSc (Est Man) FRICS
Date of determination	: 3 May 2022

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested the same, or it was not practicable, and all issues could be determined on paper. The documents that I was referred to are in a bundle of 247 pages, the contents of which we have noted.

Background

1. This is an application made by the applicant leaseholders pursuant to the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the reasonable costs to be paid under the provisions of sections 91(2)(d) and 60(1) of the Act in respect of the lease extensions to the properties set out on the schedule annexed hereto (the “property”).
2. The applications bear different dates and were lodged at the tribunal by the individual leaseholder(s). Directions were issued on 2 February 2022 providing for the 11 cases to be amalgamated and to be dealt with on the papers. The matter came before us for determination on 28 April 2022.
3. We had before us an amalgamated bundle containing details of the costs claimed in respect of each property. We were also provided with statements by Mr Ammar Bakhaya, an owner of flat 9 Sandringham House purportedly on behalf of the leaseholders, with exhibits. This statement had been made in response to the costs claims by both Wallace LLP and Gregsons. In addition we had a statement made by Alexandra Adam a partner with Gregsons, solicitors for the second respondent as and a statement in response. Finally, we had before us a statement in reply lodged by Wallace LLP for the first respondent with a letter from this firm relating to VAT issues.
4. We have read the contents of the bundle and in particular the various statements/submissions.
5. A brief history of the matter can be found in the Statement in Reply made by Wallace LLP at pages 229 of the bundle. The first respondent Deansgate Nominees Limited is the freehold owner of the Windsor Way Estate. Within the estate, the subject of this application, are 11 flats as set out on the schedule annexed, with a royal linkage. The freehold is subject to a headlease held by the second respondent Windsor Way Management Company Limited. The competent landlord is the first respondent. The applicants are lessees holding under leases of 125 years from 25 June 1985.
6. There is something of a torrid history regarding attempts to extend the leases. It seems that in November 2016 the lessee of 11 Tudor House

attempted but relied on a faulty Notice of Claim, this was eventually corrected but the claim petered out as no application was made to the tribunal in time.

7. There then followed an attempt to start the process when in March 2019 Initial Notices were served on behalf of flats, at 11 and 22 Tudor House, 3 Stuart House, 9 Sandringham House and 12 and 20 Balmoral House. This again was faulty, it would seem for the same reasons as the Initial Notice for 11 Tudor House. On 31 May 2019 Initial Notices were reserved on behalf of 6 flats and their right to a new lease was admitted.
8. On or about 22 August 2019 further Initial Notices were served on behalf of the lessees of the remaining 5 flats, 21 and 23 Balmoral House, 7 and 16 Regent House and 17 Tudor House. It was accepted that these lessees were entitled to seek a lease extension. Despite attempts to settle the terms of dispute this proved impossible, and the matter was sent to the First-tier Tribunal between January and April 2020 and listed for a two-day hearing on 13/14 April 2022. However, on the day before the hearing the applicants withdrew.
9. The costs claimed by the respondents under section 60 of the Act have not been agreed and the matter came before us for determination on the papers on 28 April 2022.
10. The provisions of s60 of the Act are set out below and have been borne in mind by us in reaching this decision.

The tribunal's determination

11. **The tribunal determines that the costs payable under the provisions of s60(1) of the Act are as set out for each application on the schedule annexed to this decision.**

Reasons for the tribunal's determination

12. We have taken into account the submissions made on behalf of the parties. Mr. Bakhaya makes the following submissions. Recently, Wallace LLP, the usual solicitors for the first respondent had been involved in a lease extension on another property at the development, where an extended lease had been agreed. It was hoped that this would form the basis for any lease to be extended under the recent application. The leaseholders of the 11 flats had formed a "club" and had instructed Penningtons Manches Cooper to act with Egerton Limited appointed as surveyors. We have noted the comments concerning the involvement of Gregsons in the process and the apparent reasons for withdrawing.

13. The statement goes on to set out the reasons for challenging the costs. For Wallace it is said that the level of fee earner was too high and that as they act on a regular basis for the first respondent, they should have systems and documents in place to enable this application to have been dealt with a lower fee level grade. It is also suggested that the costs do not reflect that there was a possibility of some economy of scale. It is also suggested that the time spent on agreeing the lease terms was excessive and that there was little in the way of communication with Gregsons or the client.
14. In respect of the valuation fees of Fifield Glyn it is said that again there was no economy of scale, that they resiled from the first Counter Notice and were, it seems, not amenable to settlement. The valuer for the applicants suggests that Fifield's fees should be no more than £500 per flat and that there should be no fee for the second respondent's valuer, as he was dis-instructed.
15. As for the fees of Gregsons there was again a challenge to the level of fee earner and a suggestion that they could have adopted the values arrived at by Fifield's. There is a challenge to the time spent and a submission that the errors with the first batch of Initial Notices should not have given rise to the charge of £100 for each one.
16. Finally, there is a challenge to the valuation fees incurred by the second respondent. It is said that Gregsons stated they adopted a neutral stance, the dis-instruction of the valuer evidencing this neutral role and the statement of facts confirmed that "the intermediate landlord has not made claims for compensation under paragraph 9 of the Act". In addition, the valuation reports were not produced.
17. Both Gregsons and Wallace LLP respond to this issues and we have carefully noted all that has been said.

Findings

18. We shall deal firstly with the fees of Wallace LLP. They set out paragraph 27 the fees they seek in respect of each property. They total £43,168.68 of which £23,994.40 are solicitors' fees, excluding VAT. We have noted all that is said in their response dated 30 March 2022 at page 229 onwards.
19. We propose to take a broad brush approach to the assessment of these costs, payable under the provisions of s60 of the Act. The main area that we consider that there should be a review is the economy of scale point. We are surprised that given the apparent close relationship between Wallace and the first respondent there was not some attempt by the first respondent to agree some form of fixed fee arrangement. The case involves 11 flats on the same estate, dealt with in batches and

presumably having essentially the same lease terms. We consider that there are three elements of each fee claim that are common to all properties. These are the review of the Initial Notice, the preparation of the Counter Notice and the preparation of a lease.

20. Taking each in turn we shall deal with the review of the Initial Notice first. There were Notices served in March 2019, which were faulty. These were corrected by Notices served dated 31 May 2019. These were correct and were essentially in the same format. There then followed service of Notices on 22 August 2019, again essentially in the same format. Notwithstanding this it seems that there are charges by a partner of between .5 and .6 of an hour for the consideration of each Notice. We find that to be excessive. It seems that the error related to the failure to refer to proposals for the second respondent's interest and was common to the first Initial Notices served in March 2019, relating to 6 properties. It seems that the re-served Notices and those served in August were accepted. The charges made appear to be between 5 and 6 units for the first Notice, whether right or not and in respect of the faulty ones a further 4 units. We find that it would have been appropriate for a partner to review one of each Notices and to then arrange for an assistant to check the others. This would mean that for the initial faulty notices one hour should have been sufficient to check the common error and then an hour for an assistant to review the remainder. This would give a global fee of £880. This needs to be doubled to reflect that a second Initial Notice was served in May 2019. Accordingly, for the flats at 11 and 22 Tudor House, 3 Stuart House, 9 Sandringham House and 12 and 20 Balmoral House the costs for reviewing the Initial Notice should be reduced to reflect these points, with a figure of £294 substituted for each of the 6 flats.
21. For the Initial Notices served on 22 August 2019 we consider that one hour for the partner and one hour for the assistant would be appropriate, giving a fee per flat of £176. We would propose making similar reductions in respect of 11 Tudor House.
22. As to the Counter Notices we see from the costs schedules that for example on 12 Balmoral 1½ hours are spent on the first Counter Notice and a further hour on the second Counter Notice. The same charge applies to 20 Balmoral House and 22 Tudor House. Again, we consider that there should be some economy of scale. One hour for the partner to review a Counter Notice and ensure it is correct and a further hour for an assistant to review the others having a template before them is we find a reasonable charge. This would give a global fee of £880, or £147 per flat. This would need to be doubled for the six flats that served two Initial Notices, being £294.
23. The third element of duplication relates to the preparation of the lease. Our review of the various costs schedules show that a partner spent 5 units in relation to the lease for each property and further time, of

between 3 and 1 units, are recoded for an assistant. Applying the rates to these times gives costs over £3,400, which seems excessive when there did not appear to be much in dispute as reflected by the exchanges of emails presented to us. We consider that three units by a partner and one by an assistant would be appropriate giving a rate of £187.

24. We propose to deal with the costs in this fashion. We calculate that the reductions we have made in respect of those costs we consider should have been dealt with more economically equates to around 35% of the overall cost for those elements. The remainder of the costs are not, we find, excessive and we would not seek to reduce those to any degree. There is some duplication of email communications for example there appears to be emails sent on a number of the schedules on 29 May 2019 to the client. We have no doubt that a client paying for these costs would not expect to get several emails on the essentially the same subject on the same day.
25. The section 60 provisions are clear. Of importance is section 60 (2) which says :

(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.
26. We indicated at the start of this findings section that we would take a broad-brush approach. We consider that a client anticipating paying for the costs of these 11 lease extensions would firstly have endeavoured to agree a fixed rate. Further it would be expected that there would be some economy of scale. The first respondent's solicitors are very experienced in this field and would have the necessary expertise to deal with matters without unnecessary time being spent and utilising the appropriate fee earner.
27. We calculate that taking 12 Balmoral as the guide for those flats where two notices were served the costs claimed without VAT are £2,885.50. If we make the deductions we have shown above, that is to say reducing the fees in respect of the initial review, the preparation of the Counter Notice and the lease gives fees of £775 as being recoverable. The actual costs for the review, Counter Notice and lease are, we calculate £1,797.50. If we deduct that sum from the remainder of the fees of £2,888.50, we are left with £1,091. We then need to add back the fees we have allowed of £775 to give a figure of £1,886, which is, we calculate around 65% of the total claimed.

28. We propose to adopt this percentage figure for each claim and reduce the costs charged across the board by 35%. This gives the costs for Wallace LLP as shown on the attached schedule. Standing back this seems a reasonable charge to make given the potential for duplication, lower grade of fee earner and the provisions of section 60(2) of the Act.
29. We turn then to the fees of Gregsons. We are in possession of a witness statement of Alexandra Adams a partner dated 22 February 2022 at page 195 onwards of the hearing bundle and a response to the statement of Mr Bakhaya. We have noted all that has been said. It does seem that the intermediate landlords' solicitors were not greatly involved in this process, adopting a neutral stance. A fixed fee had been agreed but there is an additional fee of £100 for each of the invalid Initial Notices. It is accepted by us that separate representation was required for the reasons set out at paragraph 6 of Ms Adams' witness statement made in February this year. There is no letter from the client agreeing the fixed rate but we, of course, accept Ms Adams assertion in this regard.
30. The second respondent is, we are told a lessee owned company and presumably any shortfall of fees would be recoverable from the shareholders, or the company would face insolvency. We note that the fees claimed include 8 and 17 Balmoral House and 10 Warwick House, which do not appear as parties to these proceedings. Accordingly, it would seem correct to remove £1,700 from the costs payable by the applicants. We assume the reference to 9 Regent House should be 7 Regent House. In these circumstances we allow the sum of £720 including VAT for the costs of Gregsons to be paid, by those properties that were the subject of two Initial Notices, namely 11 and 22 Tudor House, 3 Stuart House, 9 Sandringham House and 12 and 20 Balmoral House. The remaining properties shall pay the sum of £600 each inclusive of VAT.
31. The next question relates to the valuers fees. We have seen the schedules showing how the costs of the valuations for the 14 properties has accumulated. Three of the properties do not form part of this application, 8 and 17 Balmoral House and 10 Warwick House. We do not consider that these fees should be the liability of the applicants. For the 5 the subject of the August Initial Notice the fee of £400 is claimed and is allowed. As we said in respect of the fees of Wallace LLP there must be some economy of scale. The total fees sought by Fifield Glyn are £9,585.50 plus VAT for the 11 flats. This to our mind is excessive given that there is no suggestion any of the flats were different from the others. We have found that the fee of £400 is reasonable for those flats the subject of the correct Initial Notice. We find that an uplift of £200 would be more than adequate to reflect the limited extra work that would be required in respect of those flats for which two Initial Notices were served. In addition, there will be VAT to pay. We have seen the email of Mr Hutchinson dated 13 January 2021 at page 223 of the bundle.

32. As to the valuations for the second respondent the fees of Fanshawe White are £360 inclusive all showing dates of “activity” of 13 November 2020 which post-dates any of the Counter Notices and indeed the applications for the determination of the terms of acquisition, which we understand to have been between January and April 2020. Further no flat details are given. There is some confusion on this as it seems Gregsons invoiced their client on 13 October 2020. The statement of Ms Adams dated 25 March 2022 says at paragraph 8 that “The intermediate Landlord adopted a neutral position once Tribunal applications had been made. By then it was satisfied that its interests were fully protected.... and there was no need for it to take any further steps in the process”. In the light of this we fail to see that these fees fall within section 60(1)(b) and we disallow them. As to the fees of Scrivener Tibbatts these are dated July 2019 and list the properties considered, which seems to include inspections. We consider that £250 per flat, plus VAT is reasonable and allow the sum of £300 for each of those properties shown on the invoice dated 29 July 2019, namely 12 and 20 Balmoral House, 9 Sandringham House, 3 Stuart House and 11 and 22 Tudor House.
33. There does not appear to be any challenge to the disbursements claimed in this case.
34. Accordingly, we find that the costs payable under the provisions of the Act (s91(2)(d) and 60(1)) are as set out on the attached schedule.

Name: Tribunal Judge Dutton **Date:** 3 May 2022

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).

The relevant law

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 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.

Schedule of costs for each flat the subject of these proceedings
Costs of the First Respondent Deansgate Nominees Limited

12 Balmoral House

Wallace LLP fees £1,877 plus VAT £375.40
Valuers fee £600 plus VAT £120
Disbursements £43.20 (inc) Total £3,015.70

20 Balmoral House

Wallace LLP fees £1,700 plus VAT £340
Valuers fee £600 plus VAT £120
Disbursements £28.80 (inc) Total £2,788.80

9 Sandringham House

Wallace LLP fees £1803 plus VAT 360.60
Valuers fee £600 plus VAT £120
Disbursements £39.60 (inc) Total £2,923.20

3 Stuart House

Wallace LLP fees £1,710 plus VAT £342
Valuers fee £600 plus VAT £120
Disbursements £36 (inc) Total £2,808

11 Tudor House

Wallace LLP fees £2,544 plus VAT £508.80
Valuers fee £600 plus VAT £120
Disbursements £59.50 (inc) Total £3,832.30

22 Tudor House

Wallace LLP fees £1,419 plus VAT £283.80
Valuers fee £600 plus VAT £120
Disbursements £14.40 (inc) Total £2,437.20

21 Balmoral House

Wallace LLP fees £1,283 plus VAT £256.60
Valuers fee £400 plus VAT £80
Disbursements £28.80 (inc) Total £2,048.40

23 Balmoral House

Wallace LLP fees £1,251 plus VA £250.20
Valuers fee £400 plus VAT £80

Disbursements £28.80 (inc) Total £2,010

17 Tudor House

Wallace LLP fees £1,162 plus VAT £232.40

Valuers fee £400 plus VAT £80

Disbursements £39.60 (inc) Total £1,914

7 Regent House

Wallace LLP fees £1,226 plus VAT £245.20

Valuers fee £400 plus VAT £80

Disbursements £14.40 (inc) Total £1,965.60

16 Regent House

Wallace LLP fees £1,223 plus VAT £244.60

Valuers fee £400 plus VAT £80

Disbursements £32.40 (inc) Total £1,980

Costs of second Respondent Windsor Way Management Company Limited
Gregsons fee

11 and 22 Tudor House, 3 Stuart House, 9 Sandringham House and 12 and 20 Balmoral House.

£720 each property

21 and 23 Balmoral House, 17 Tudor House and 7 and 16 Regent House,

£600 each property

Valuation fees

11 and 22 Tudor House, 3 Stuart House, 9 Sandringham House and 12 and 20 Balmoral House.

£300 for each property

Disbursements of £39

This sum should be split equally between the 11 properties the subject of this application

