

**SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL**

**Case No: CHI/00HN/OC9/2008/0006**

**BETWEEN:**

**MS J BALLARD**

**Applicant/Lessee**

**- and -**

**ALICE ELLEN COOPER-DEAN  
CHARITABLE FOUNDATION**

**First Respondent**

**- and -**

**CASTLE ROCK INVESTMENT**

**Second Respondent**

**- and -**

**AMERSHAM COURT (BOURNEMOUTH) LIMITED**

**Third Respondent**

**PREMISES:**

Flat 9 Amersham Court  
30 Marlborough Road  
Bournemouth  
BH4 8DH ("the Premises")

**TRIBUNAL:**

Mr D Agnew LLB, LLM

**Determination**

The costs of the First Respondent payable by the Applicant shall be £1,658.50 and the costs of the Second Respondent payable by the Applicant shall be £180.40.

**Reasons**

**1. The Application**

- 1.1** On 14<sup>th</sup> October 2008 Coles Miller Solicitors LLP submitted an application to the Tribunal on behalf of the Applicant for a determination as to the Applicant's ability to pay the legal fees of the First, Second and Third Respondents and the amount thereof resulting from the Applicant having extended her lease of the Premises under Section 39 of the Leasehold Reform, Housing & Urban Development Act 1993 ("the Act").

- 1.2 On 27<sup>th</sup> October 2008 the Tribunal issued directions giving the opportunity for the matter to be dealt with on paper without a hearing if the parties so agreed. The parties did so agree.
- 1.3 On 14<sup>th</sup> November 2008 Messrs Preston Redman, solicitors for the First Respondent provided the Tribunal with a detailed breakdown of the costs being sought on behalf of their client. On 19<sup>th</sup> November 2008 Messrs Hansell Wilkes & Co, solicitors for the Second Respondent provided a breakdown of the costs they were seeking on behalf of their client and on 18<sup>th</sup> November 2008 Messrs Wetheralls, solicitors, did the same on behalf of the Third Respondent.
- 1.4 The Applicant's points of dispute to the aforesaid costs were submitted to the Tribunal and the Respondents under cover of a letter dated 10<sup>th</sup> December 2008.
- 1.5 As a result of the points of dispute made in respect of the Third Respondent's costs, the Third Respondent withdrew its claim for costs by letter dated 6<sup>th</sup> January 2009.

## 2. The Law

- 2.1 Section 60 of the Act deals with the liability to pay costs in the circumstances of this case. Section 60(1) states:-

"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 notices, 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 .....

- 2.2 Section 60(2) states:-

"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 the 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.

- 2.3 Section 60(5) states that:-

"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.

- 2.4 By Section 60(6) of the Act "relevant person" is defined as "the landlord for the purposes of this Chapter, any other landlord (as defined by Section 40(4)) or any third party to be tenant's lease.
- 2.5 Section 40(4) states that "other landlord" means any person..... in whom there is vested a concurrent tenancy intermediate between the interest of the competent landlord and the tenant's lease."

3. The Points in Dispute and Points in Reply

- 3.1 The Applicant's points of dispute with regard to the Respondents' costs fell into two categories: one generic and the other specific. The generic objections concerned the Applicant's solicitors' approach to Section 60 and what costs the First Respondent says do or do not come within that section as being claimable from the Respondents and the charging rates to be applied to the work done. The particular objections referred specifically to whether a particular item claimed was reasonable for the Applicant to have to pay in the circumstances of this case.
- 3.2 There is appended to this determination at Appendix 1 a copy of the First Respondent's breakdown of costs and at Appendix 2 the Second Respondent's claim for costs. At Appendix 3 is a schedule showing the amount allowed by the Tribunal together with a brief reason for the Tribunal's decision. Where no reason appears against an item it is because the item has not been challenged in principle and the charging rate found by the Tribunal to be reasonable has been applied. The Tribunal sets out in the following paragraphs, however, its determination as to the generic points of dispute raised by the Applicant as this will explain more fully the approach the Tribunal has taken in reaching its decision on each item in dispute.
- 3.3.1 The first general point raised by the Applicant was that they contended that the respondents were seeking to recover indemnity costs: that some costs claimed were not within the ambit of Section 60 of the act or that they were in connection with the Tribunal proceedings and therefore not recoverable by virtue of Section 60(5). The Applicants cited the Tribunal's decision in the case of Ireland v Sinclair Garden Investments (Kensington) Limited (case no: CHI/OOHP/OC9/2005/0001) which concluded that the similar provisions concerning costs on a collective enfranchisement under Section 33 of the Act were "very far from providing for the Respondent to be able to claim indemnity costs from the Applicant." The Applicant's solicitors went on to say that simply because a certain amount of time has been spent on a particular task does not necessarily guarantee that the time was justified and recoverable. Section 60(2) (quoted above) is a check on that.
- 3.3.2 The First Respondent's solicitors contended that the inclusion of the words "of and incidental to" before the activity listed in sub-paragraphs (a) to (c) of Section 60(1) allow a

less restrictive interpretation as to what may properly be claimed than the Applicants contend. They cited the Tribunal decision in *Edwards v The Incorporated Trustees of the Dulwich Estate (LON/LN/1781/02)* in aid of this proposition where it was said that Section 60 was "sufficiently wide to include argument or negotiation of the amount of the claim and the terms of the lease and all the other necessary discussions and correspondence that normally take place between solicitors in these circumstances." The Respondents also quote from the Tribunal decision in *Warren v Cutler and Barnett Waddingham Trustees Ltd (CAM/26UK/OC9/2008/0001)* where it was said that the wording of Section 60 was "clear and unambiguous" and that it operate so that the indemnity principle applies and any doubt is to be resolved in favour of the receiving party." They also cite the case of *Petrolux Property Services Ltd v Sinclair Garden Investments (Kensington) Ltd (CAM/26UB/OLR/2008/0055)* and *Cromwell Court Management Ltd* as supporting the view that the method of assessment is "on the basis of the indemnity principle." The Respondents also make the point that Parliament cannot have intended landlords who are unwilling participants in the process to be unduly out of pocket in respect of costs "which they would not have chosen to incur in the first place." In any event, the Respondent denied that it was seeking payment of costs on an indemnity basis as certain items which were outside the scope of Section 60 have not, they say, been claimed.

3.3.3 This Tribunal's approach to the arguments made in the previous two sub-paragraphs is as follows:-

- a) as both parties recognise decisions of previous Tribunals are not binding on another Tribunal although the desirability of consistency is recognised wherever possible.
- b) on the point in issue there are conflicting previous decisions.
- c) this Tribunal does not consider it helpful or constructive to talk in terms of indemnity costs or the indemnity principle. There seems to have been some confusion in the cases quoted as to the meaning of these terms.
- d) this Tribunal considers that it is incorrect to talk about indemnity costs where Parliament has specifically laid down the three categories of work for which the tenant is liable to pay costs namely those in Section 60(1)(a) to 60(1)(c) of the Act. The Respondent is likely to be considerably out of pocket if the case proceeds to a Tribunal hearing because the costs of the same are specifically excluded from Section 60. It cannot be said therefore that Parliament intended the landlord not to suffer costs of the procedure. Parliament evidently did not intend the tenant to be liable for all the landlord's reasonable costs incurred in the process otherwise Section 60 could simply have stated that the tenant would be liable for all the landlord's reasonable costs pursuant to an initial notice to be paid but that is not what the section provides. This Tribunal therefore takes a more restrictive interpretation of Section 60 than that expounded in the *Warren v Cutler*

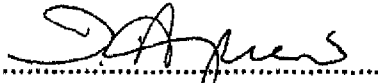
and Barnett Waddingham Trustees case. This Tribunal takes the view that the costs claimed must come within the three categories of sub-paragraphs (a) and (c) of Section 60(1) or be incidental to those categories above. Thereafter the costs must be reasonable for the tenant to be liable for them and they will not be reasonable if they go beyond what the landlord would have paid if he were liable to pay those costs himself.

3.3.4 The next generic point made by the Applicants is that it "is well established" that the costs of drafting and serving the counter-notice is not recoverable and that this has been confirmed "in many LVT decisions." This is rejected by the Respondents' solicitors who again quote the Warren case and the case of *Haivalainen v Daejan Estates Ltd* (LON/NL/5425/06) as coming to a different decision on this point. This Tribunal adheres to the view it took in the case of *Mellery-Pratt v Wychwood Freehold Ltd* (CHI/00HN/OC9/2008/0001) at paragraphs 6.7, referred to by the First Respondent, that "although the cost of actually preparing and serving the counter-notice are outwith the ambit of the section "there could be some costs properly claimable by a landlord preparatory to the drafting of the counter-notice provided they relate to an investigation as to the tenants' right to a new lease."

3.3.5 The next point in contention was the hourly rates claimed by the First Respondent's solicitors, the Second Respondent's solicitors' rate of £174 plus VAT per hour having been agreed. The First Respondent's solicitor's charging rate claimed is £215 plus VAT per hour. The Claimants object to this rate on the basis that it is higher than the guideline rates for summary assessment in the Bournemouth County Court. They contend that the appropriate rate is £195 plus VAT per hour for 2007 and £203 plus VAT per hour for 2008. The First Respondent points out the Court Guideline rates are only a guide and not a cap and for use in contentious litigation business for assessment on the standard rather than indemnity basis. Further, they point out that their fee rates have been agreed by their client and would be paid by them at that rate if they were liable personally for the fees. This Tribunal determines that it is not bound by the court guideline figures but has to consider what a reasonable charging rate should be applicable in the circumstances of this case. Leasehold extensions are not easy matters to deal with. They require quite a high level of expertise and this Tribunal considers that a charging rate of £215 plus VAT per hour is not unreasonable for the whole of the period concerned in this case which was from November 2007 to October 2008. The fact that the Second Respondent has charged a lower rate is not a material factor. The fact that the greater responsibility is placed by the legislation on the competent landlord, namely the First Respondent in this case, would justify the higher charging rate.

4. The amount determined by the Tribunal as the appropriate amount for the Applicant to pay the First Defendant in respect of its legal costs is £1658.50 and the amount for the Applicant to pay the second Respondent £180.40

Dated this 30<sup>th</sup> day of January 2009

A handwritten signature in black ink, appearing to read 'D. Agnew', written over a horizontal dotted line.

D. Agnew LLB, LLM  
Legal Chairman

# APPENDIX 1

## BREAKDOWN OF COSTS

FLAT 9 AMERSHAM COURT 30 MARLBOROUGH ROAD, BOURNEMOUTH

### Details of the Respondent's Solicitors' charges

Key:	
L/o	Letter outgoing
T/i	Telephone incoming
T/o	Telephone outgoing
i/c	Incoming
CM	Coles Miller, The Applicants Solicitors
W	Wetheralls, the headlessee's Solicitors
HW&Co	Hansell Wilkes & Co, Management Co's Sols
GB	Geoff Bevans, Respondents Valuer
S&S	Symonds & Sampson, Respondents Managing Agents
EO&B	Edward Oliver & Bellis, Purchaser's Sols

Item No.	Date	Work Undertaken	Fee Earner	Units of Time (No. of Units @ 6 mins per unit)	Charge Out Rate	Amount Billed
						£
1.	05/11/07	Att client for instructions	SF	1	£215	21.50
2.	"	T/o HW&Co – TRB	SF	1	£215	21.50
3.	"	T/o W – TRB	SF	1	£215	21.50
4.	08/11/07	T/o W – they have no instructions yet – we to fax them copy of Notice of Claim	SF	1	£215	21.50
5.	"	L/o W with copies of recent correspondence & Notice of Claim	SF	1	£215	21.50
6.	08/11/07	T/o HW&Co to check if they are instructed	SF	1	£215	21.50 (no file note)
7.	13/11/07	Prep of diary entries re Counter-Notice	SF	1	£215	21.50

8.	13/11/07	L/o CM ack. i/c Notice of Claim & advising who valuer is & also raising few queries	SF	1	£215	21.50
9.	"	L/o HW&Co seeking instructions & copying Notice of Claim (Letter sent 14/01/07)	SF	1	£215	21.50
10.	"	L/o with instructions & copying i/c Notice of Claim	SF	1	£215	21.50
11.	"	L/o S&S with copy correspondence & copying i/c Notice of Claim	SF	1	£215	21.50
12.	16/11/07	L/o CM re their i/c	SF	1	£215	21.50
13.	"	L/o HW&Co re their i/c	SF	1	£215	21.50
14.	"	L/o W chasing a response (by fax)	SF	1	£215	21.50
15.	"	T/I W re our earlier fax	SF	1	£215	21.50
16.	"	T/o W – TRB	SF	1	£215	21.50
17.	"	T/I W re validity point	SF	1	£215	21.50
18.	22/11/07	T/o W chasing – requested a copy of flat lease	SF	1	£215	21.50
19.	"	T/o GB – chasing report	SF	1	£215	21.50
20.	30/11/07	Att client for instructions and reporting	SF	1	£215	21.50
21.	"	L/o CM re their i/c letters	SF	1	£215	21.50
22.	"	L/o GB with copy letters etc. & requesting expedition	SF	1	£215	21.50
23.	"	Perusing & checking CM's i/c letters	SF	1	£215	21.50
24.	03/12/07	Drafting new lease	SF	8	£215	172.00
25.	03/12/07	L/o HW&Co with update & draft lease for comments	SF	1	£215	21.50



26.	03/12/07	L/o W with update & draft lease for comments	SF	1	£215	21.50
27.	11/12/07	T/I W re theirs of 6/12 & subsequent instructions re draft lease	SF	1	£215	21.50
28.	12/12/07	E-mail/o GB chasing his report	SF	1	£215	21.50
29.	"	Preliminary drafting of Counter-Notice	SF	5	£215	107.50
30.	13/12/07	Att client for instructions	SF	1	£215	21.50
31.	"	E-mail/o GB for clarification	SF	1	£215	21.50
32.	"	Perusing GB's i/c e-mail & checking details	SF	1	£215	21.50
33.	"	Re-drafting of Counter-Notice	SF	1	£215	21.50
34.	"	E-mail/o W with draft Counter-Notice for comments	SF	1	£215	21.50
35.	"	E-mail/o HW&Co with draft Counter-Notice for comments	SF	1	£215	21.50
36.	18/12/07	L/o W with copy Flat lease extract	SF	1	£215	21.50
37.	"	T/o W to discuss	SF	1	£215	21.50 <i>(no file note)</i>
38.	"	Att client for instructions	SF	1	£215	21.50
39.	19/12/07	T/o HW&Co – not available – speak to secretary – stress need to serve C-N – TRB				<i>Not time recorded</i>
40.	"	T/I HW&Co returning call – go ahead for service of C-N	SF	1	£215	21.50
41.	"	E-mail/o W chasing	SF	1	£215	21.50
42.	"	T/o W chasing	SF	1	£215	21.50
43.	20/12/07	E-mail/o W – Chasing	SF	1	£215	21.50

44.	20/12/07	E-mail/o W in response to their i/c	SF	1	£215	21.50
45.	"	T/o W (long) Chasing - stressing importance of serving etc.	SF	2	£215	43.00
46.	21/12/07	T/o W - can go ahead with service of C-N	SF	1	£215	21.50
47.	28/12/07	L/o Tenant serving Counter-Notice	SF	1	£215	21.50
48.	"	L/o CM with copy of C-N & confirming service effected	SF	1	£215	21.50
49.	"	L/o HW&Co with copy of C-N & confirming service effected	SF	1	£215	21.50
50.	"	L/o W with copy of C-N & confirming service effected	SF	1	£215	21.50
51.	"	L/o GB with copy of C-N & confirming service effected	SF	1	£215	21.50
52.	"	Travelling to offices of CM re service of Counter-Notice	SF	2	£215	43.00
53.	17/01/08	L/o CM acknowledging their i/c re valuer details	SF	1	£215	21.50
54.	"	L/o GB with copy of i/c CM letter re his opposite number	SF	1	£215	21.50
55.	28.01.08	Perusing i/c GB letter		1		21.50
56.	11.02.08	T/i GB re his letter to AEC of 28.01.08	SF	1	£215	21.50
57.	12.02.08	Email out to AEC re his i/c copy email	SF	1	£215	21.50
58.	12.02.08	Email out to GB with copy AEC's response	SF	1	£215	21.50
59.	13.02.08	L/o CM re price etc	SF	1	£215	21.50
60.	"	T/o GB re his i/c letter	SF	1	£215	21.50
61.	30.05.08	Considering amendments to draft Lease in conjunction with existing Lease, Underlease and Sub Underlease	JH	6	£220	132.00

62.	30.05.08	L/o CM acknowledging and confirming instructions sought	JH	1	£220	22.00
63.	"	L/o HW & Co and W seeking comment re amendments to draft Lease	JH	2	£220	44.00
64.	13.06.08	Checking regulations re deduction of title	JH	3	£220	66.00
65.	13.06.08	Internal email requesting Epitome	JH	1	£220	22.00
66.	17.06.08	L/o CM with Epitome	JH	1	£220	22.00
67.	"	L/o W and HW & Co chasing for response	JH	2	£220	44.00
68.	2.07.08	L/o HW & Co to chase and to advise of issue of LVT application	JH	1	£220	22.00
69.	"	L/o W to report issue of LVT application	JH	1	£220	22.00
70.	"	L/o CM dealing inter alia with position re approval of draft Lease	JH	1	£220	22.00
71.	17.07.08	L/o CM (long) re Lease amendments	SF	2	£225	45.00
72.	"	L/o HW & Co chasing	SF	1	£225	22.50
73.	14.08.08	Email to DNJ taking instructions re Section 62 point	JH	1	£235	23.50
74.	15.08.08	Considering statutory provisions re exclusion of Section 62	JH	8	£235	188.00
75.	"	L/o CM re exclusion of Section 62	JH	1	£235	23.50
76.	3.09.08	Con with DNJ taking further instructions re Section 62 issue	JH	4	£235	94.00

77.	4.09.08	Reviewing Lease and preparing final version	JH	8	£235	188.00
78.	"	L/o CM with engrossed Lease	JH	1	£235	23.50
79.	"	L/o W and HW & Co reporting agreement of Lease and enclosing final version	JH	2	£235	47.00
80.	"	L/o GB requesting costs figure	JH	1	£235	23.50
81.	10.09.08	Reviewing costs	JH	3	£235	70.50
82.	"	L/o CM and S&S re costs	JH	2	£235	47.00
83.	12.09.08	T/I W confirming they are happy with final form of Lease	JH	1	£235	23.50
84.	16.09.08	L/o CM in reply to their i/c re costs	JH	1	£235	23.50
85.	24.09.08	L/o CM confirming W and HW & Co's costs	JH	1	£235	23.50
86.	"	HW & Co acknowledging their Account	JH	1	£235	23.50
87.	14.10.08	L/o CM re completion and W up-dating	JH	2	£235	47.00
						<b>£2,903.00</b>

## APPENDIX 2

### Castle Rock - Flat 9 Amersham Court

Bill covered work during a 10 month period

Hourly rate charged £174.00 plus VAT

### Breakdown of Drafting/Considering.

88	23.10.07	Considering 2 letters from Coles Miller. Proposed Terms of New Lease, Notice of Claim. Supplied by our client Total pages 6	18 minutes
89	13.12.07	Considering 2 letters and Draft Landlords Counter Notice. Total pages 4	18 minutes
90	31.12.07	Considering served Counter Notice and accompanying letter Total pages 3	12 minutes
91	18.07.08	Considering letter from Preston Redman, copy letter from Coles Miller, letter from Residential Property Tribunal Service and Reply form. Total pages 5	18 minutes
92	08.09.08	Considering Lease	30 minutes
			Total for this section 96 minutes

### Other correspondence considered:-

- 93 Various dates
- a) Letter from Preston Redman
  - b) Routine letter + 2 copy letters from Preston Redman
  - c) Ditto
  - d) Routine letter from Preston Redman
  - e) Routine letter + 2 copy letters from Preston Redman
  - f) With Comp Slip and copy letter from Preston Redman
  - g) Ditto
  - h) Long letter from Preston Redman
  - i) 2 letters from Preston Redman
  - j) Long letter from Preston Redman

- k) Consider Assignment
  - l) Consider Sub Under-lease
  - m) Ditto Title Register
  - n) Consider paperwork in connection with Property Tribunal Service.
  - o) Considering all paperwork sent in by client.
  - p) Considering Leasehold Reform, Housing & Urban Development Act 1993
- 94 Time taken for correspondence under heading of Various dates 96 minutes
- 95 Total time taken in Drafting/Considering 192 minutes

### APPENDIX 3

Item No	Amount Claimed	Allowed	Reason
1	21.50	21.50	Within Sec 60 and reasonable
2-3	43.00	-	Not progressed case – not reasonable for tenant to pay
4-6	64.50	64.50	Liaison with other landlord's solicitors reasonable
7	21.50	-	Not within Sec 60
8	21.50	21.50	
9-11	64.50	64.50	Reasonably incurred and within Sec 60
12	21.50	21.50	
13	21.50	21.50	Reasonably incurred and within Sec 60
14-16	64.50	-	Not progressing the matter
17	21.50	21.50	
18	21.50	21.50	
19,22 -28	64.50	-	Not reasonable for tenant to have to pay for chasing
20-21	43.00	43.00	
23	21.50	21.50	This was not a routine letter in
24	172.00	107.50	Some reduction of time reasonable due to some duplication from previous lease extensions
25-27	64.50	64.50	
29-52	623.50	-	Not within Sec 60
53-54	43.00	-	Not within Sec 60
55-60	129.00	129.00	Within Sec 60
61	132.00	132.00	
62	21.50	21.50	Reasonable and within Sec 60
63	44.00	43.00	
64	66.00	64.50	It is reasonable for a solicitor to have to check the detail of legislation from time to time
65-66	44.00	43.00	
67-77	693.50	602.00	Most of the work within Sec 60. Two letters not within Sec 60
78-79	70.60	64.50	
80-82	141.00	-	Not within Sec 60
83	23.50	21.50	Within Sec 60
84-86	70.50	-	Not within Sec 60
87	47.00	43.00	
<b>Total</b>		<b>1638.50</b>	

Second Respondent's costs

88	52.20	52.20	Within Sec 60
89-90	87.00	-	Outside Sec 60
91	52.20	-	Outside Sec 60
92	87.00	52.20	Some time to consider draft lease reasonable
93-95	835.00	<u>75.00</u>	This claim is unsupported by evidence but some time would reasonably have been incurred
Total		<u>180.40</u>	