



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

**Case reference** : LON/00AP/OC9/2017/0049

**Property** : 117 Fortis Green Road, London N10  
3HP

**Applicants** : Ms D Dwek and Mr R Hyde

**Representative** : Abrahamson Associates

**Respondents** : (1) Whetstone Properties Limited  
(2) Averbrian Properties Limited

**Representative** : Male & Wagland

**Type of application** : For the determination of  
reasonable costs under s.91(2)(d)  
of the Leasehold Reform, Housing  
and Urban Development Act 1993

**Tribunal member** : Simon Brilliant

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**Venue** : 10 Alfred Place, London WC1E 7LR

**Date of decision** : 21 April 2017

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**DECISION**

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## Decision of the Tribunal

The Tribunal determines that the amount of the costs payable by the Applicants to the Respondents under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 is £2,860.80. All statutory references in this decision are to this Act.

### The application

1. The Applicants seek a determination, pursuant to section 91(2)(d), of the reasonable costs payable by them under section 60, following their service of a notice under section 42 exercising their right to acquire a new lease of the Third Floor Flat, 117 Fortis Green Road, London N10 3HP.
2. The costs application was received by the Tribunal on 23 February 2017. Directions of the Tribunal were issued on 24 February 2017. The case was listed for a paper determination.
3. The Respondents' costs are those of their solicitors, Male & Wagland, and their valuer, Anna Eckert (trading as George Eckert).
4. The solicitors' costs are as follows:
  - (A) Section 60(1)(a): The reasonable costs of and incidental to any investigation reasonably undertaken of the tenant's right to a new lease.

1.	Attendances on and correspondence with the landlord/landlord's agents obtaining instructions and advising (6 units).	£165.00
2.	Considering the lease and official copy leasehold entries (4 units).	£110.00
3.	Preliminary notices and correspondence with tenants' solicitors (5 units).	£137.50
4.	Considering validity of tenants' notice and questions which need to be confirmed in connection with investigating tenants' right to new lease (3 units).	£82.50
5.	Drafting counter-notice and serving upon tenants'	£110.00

	solicitors (4 units).	
		£605.00
	VAT	£121.00
	<b>Total</b>	<b>£726.00</b>

(B) Section 60(1)(b): The reasonable costs of and incidental to any valuation of the tenant's flat obtained for the purpose of fixing the premium.

1.	Considering valuation and correspondence and discussing same with the landlords' agents (5 units).	£137.50
	VAT	£27.50
	<b>Total</b>	<b>£165.00</b>

(C) Section 60(1)(c): The reasonable costs of and incidental to the grant of a new lease.

1.	Drafting new lease incorporating terms in counter notice.	
2.	Correspondence with tenants' solicitors thereon.	
3.	Correspondence with and attendance upon the landlords' agents.	
4.	Correspondence with RTM company.	
5.	Negotiations on terms of lease.	
6.	Agreeing final form of lease.	
7.	Prepare 2 engrossments for execution.	
8.	Prepare completion statement.	

9.	Attend to completion.	
10.	49 letters out.	
	74 units in total.	£2,035.00
	VAT	£407.00
	Land Registry copy documents	£12.00
	<b>Total</b>	<b>£2,454.00</b>

5. The solicitors' cost including VAT therefore total:

s.60(1)(a)	£726.00
s.60(1)(b)	£165.00
s.60(1)(c)	£2,454.00
<b>Total</b>	<b>£3,345.00</b>

6. The valuer's costs are £900.00 plus VAT of £180.00, totalling **£1,080.00**.
7. The total claim for costs is therefore **£4,425.00**.
8. The fee earner at Male & Wagland who carried out all the solicitors' work on behalf of the Respondents was Mr Richard Male, the senior partner and Grade A fee earner. Mr John Blank, a consultant at Abrahamson Associates, carried out all the solicitors' work on behalf of the Applicants. Mr Blank has set out his arguments on costs on behalf of the Respondents in a statement of case dated 22 March 2017. There are also a number of emails passing between Mr Male and Mr Blank setting out their respective arguments.
9. The section 42 notice is dated 5 November 2015. The terms of acquisition were finally agreed on 19 September 2016, the day before the hearing to determine the terms of the new lease.

10. On 20 February 2017 the tenants applied to the County Court for an order that a new lease be completed under section 48(3). In fact the application should have been made by 19 January 2017: sections 48(5) and (6). The tenants' notice was therefore deemed to have been withdrawn on 19 January 2017: section 53(1)(b).
11. Mr Male has suggested that in light of the notice of withdrawal the costs application is misconceived. That is not correct. The tenant has a costs liability up to the day of withdrawal (section 60(4)) and the Tribunal has jurisdiction to determine those costs. There is no evidence before me that the new lease has been completed.
12. Mr Blank objects to payment of the costs claimed under section 60(1)(b). This is said to be because instructing valuers is purely an administrative task: Sinclair Gardens Investments (Kensington) Ltd v Wisbey [2016] UKUT 0203 (LC) [25]. But that authority makes clear that the later consideration of the valuer's report is recoverable. This is what Mr Male is claiming.
13. There is no challenge to the charge out rate. Mr Blank says that this was a straight forward type of case. No more than 4 hours' solicitors work should be allowed. Since the terms of the new lease are dictated by the 1993 Act the work done under section 60(1)(c) should be carried out by a lower grade fee earner: Bowles v Brickfield Properties Ltd CAM/22UH/OLR/2016/0100. The actual completion work does not require a qualified solicitor. The Respondents produced 27 identical leases from the same estate to support their position at the hearing, and would have been in apposition to negotiate a bulk discount: Sinclair Gardens Investments (Kensington) Ltd v Wisbey [2016] UKUT 0203 (LC) [36].
14. Mr Male says that the other leases had been granted over a period of 15 years and not all at the same time, and less time was being claimed than it would otherwise have been. Hague supports the proposition that the charge out rate for a partner rather than a junior solicitor will be allowed, but no authority is cited. Only 16 extensions have been granted between March 2009 and January 2016, and only one extension over the last two years.
15. I will allow the costs claimed under sections 60(1)(a) and (b). I will limit the amount recoverable under section 60(1)(c) to 4 hours. As I have said, the notice was deemed withdrawn on 19 January 2017 and there is no evidence of completion.
16. I am persuaded, on balance, that the Respondents have failed to explain why a discount or fixed fee arrangement was not entered into when leases in the premises began to be extended. I will therefore reduce the total solicitors' costs by 20%.

17. Having read Ms Eckerts' letter dated 28 March 2017, I consider her fees reasonable.
18. The solicitors' costs allowed are:

	Claimed before VAT	Deductions where appropriate	Allowed
s.60(1)(a)	£605.00	20% x £605.00	£484.00
s.60(1)(b)	£137.50	20% x £137.50	£110.00
s.60(1)(c)	£2,035.00	20% x [4 hours x £275.00 = £1,100.00]	£880.00
Total			£1,474.00
VAT			£294.80
		Land Registry copy documents	£12.00
Total			<b>£1,780.80</b>

19. The total costs allowed are therefore **£2,860.80**.

Name: Simon Brilliant

Date: 21 April 2015