FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/OOHB/LCP/2017/0004**
Property	**:**	**Central Quay North, Broad Quay, Bristol, BS1 4AU and 8 Marsh Street, Bristol BS1 4AX**
First Applicant	**:**	**Broad Quay North Block Freehold Limited**
Second Applicant	**:**	**Broad Quay Management Company Limited**
Represented by	**:**	**Ashley Wilson Solicitors**
Respondent	**:**	**CQN RTM Company Limited**
Represented by	**:**	**Dudley Joiner of RTMF**
Type of Application	**:**	**Right to Manage costs: Commonhold and Leasehold Reform Act 2002, section 88(4).**
Tribunal Member	**:**	**Judge M Davey**
Date of Decision	**:**	**7 February 2019**

DECISION

The Tribunal determines that reasonable fees of £41,438.30 (including VAT in so far as the Respondent is liable for VAT) are recoverable by the Applicants from the Respondent under section 88 of the Commonhold and Leasehold Reform Act 2002. The breakdown is set out in the following table and more particularly on the attached spread sheet.

	Costs	VAT	Sub-total
Ashley Wilson Solicitors costs	£18,080	£3,616	£21,696
Counsel's fees	£15,900	£3,180	£19,080
Management Fees	£0	£0	£ 0
Other disbursements	£662.30	£0.00	£ 662.30
		Total	£41,438.30

REASONS FOR DECISION

The Application

1. These are the reasons for decision of the First-tier Tribunal (Property Chamber) ("the Tribunal") in the matter of an application ("the Costs Application") dated 8 November 2017 and made under section 88(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") by (1) Broad Quay North Block Freehold Ltd. and (2) Broad Quay Management Company Ltd. ("The Applicants"). The respondent to that Application is CQN RTM Company Limited ("the Respondent"), which was incorporated on 8 August 2016. The Applicants are represented by Ashley Wilson LLP (Solicitors) ("AW") and the Respondent by Mr Dudley Joiner of RTMF Services Limited.

Background to and subsequent history of the Application

2. The Application is related to a claim made by the Respondent RTM Company on 5 October 2016 to exercise the right to manage ("the RTM") premises at Central Quay North, Broad Quay, Bristol, BS1 4AU and 8 Marsh Street Bristol BS1 4AX ("the Premises") under Chapter 1 of Part 2 to the 2002 Act. Following the service of the claim notice the Applicants served a counter notice on 9 November 2016 disputing the claim. On 20 December 2016 the Respondent made an application to the Tribunal under section 84(3) of the 2002 Act ("the RTM Application) for a determination that it was entitled to exercise the RTM. A hearing of the matter by the Tribunal was held in Bristol on 29 March 2017. At that hearing Broad Quay North Block Freehold Ltd. and Broad Quay Management Company Ltd., who resisted the claim, were represented

by Mr Jonathan Upton of counsel, instructed by AW and the RTM Company was represented by Ms Margarita Mossop (solicitor advocate), instructed by Mr Dudley Joiner of RTMF Services Ltd.

3. The Tribunal issued its decision to the parties on 7 June 2017. The decision was that the Respondent was not entitled to exercise the RTM on the basis that the requirement in section 72(1)(a) of the 2002 Act, that the building be a self contained building or part of a building, was not satisfied. On 17 August 2017 the Tribunal refused the Respondent permission to appeal. On 19 September 2017 the Upper Tribunal granted the Respondent permission to appeal. The Upper Tribunal held a hearing of the subsequent appeal on 15 May 2018 and on 23 May 2018, Judge Hodge QC sent his draft decision, dismissing the appeal, to the parties. On 5 June 2018 counsel for the Respondent RTM Company submitted a Note to the judge asking him to alter his reasons and reverse the decision for the reasons stated in the Note. On 1 August 2018 the Upper Tribunal issued its final decision, which reflected the alteration of a passage in the draft reasons but not the decision. Thus the appeal was dismissed.

4. By the present Application, the Applicants seek a determination from the Tribunal as to the costs payable by the Respondent under section 88 of the 2002 Act. The Application is dated 8 November 2017, that is to say after the Upper Tribunal granted permission to appeal the Tribunal's determination under section 84(3) of the 2002 Act.

5. Judge D R Whitney issued Directions on 24 November 2017. The Directions stated that the Application would be determined without a hearing, unless either party objected within 28 days, and set out a timetable for submission of arguments. On 1 December 2017 the Tribunal stayed the Directions of 24 November 2017 at the request of the Respondent. On 11 September 2018 the stay was lifted and the Directions of 24 November 2017 became operative subject to specified amendments regarding the timetable dates.

6. On 1 October 2018 AW submitted a witness statement by Jade Wilson, the solicitor who has handled the bulk of the case for the Applicants. The Respondent then produced a schedule of disputed costs to which Jade Wilson produced a statement in reply dated 7 November 2018.

7. The Tribunal informed the parties on 27 November 2018 that the matter would be determined on the notified date on the basis of written representations and without an oral hearing.

8. Although neither party had requested an oral hearing, there was subsequently an exchange of emails between the representatives of the parties and the Tribunal as to whether the Respondent was entitled at that stage to request an oral hearing or, if not, whether the Tribunal's decision would be provisional. The Directions of 27 November 2017 had stated that the decision "may" be provisional (emphasis supplied). A procedural judge decided that it was too late to request a

hearing and that it was a matter for the Tribunal as to whether its decision would be provisional. The Tribunal subsequently, by way of a series of questions addressed to AW, required further particulars and documentation from the Applicants, such materials to be copied to the Respondent. The Tribunal received the Applicant's response and associated documentation from AW on 28 January 2019.

9. On 31 January 2019 the Respondent's representative, Mr Joiner, submitted comments on the Applicant's response, to which AW replied in turn on the same day. AW asked the Tribunal to ignore the Respondent's comments of 31 January 2019, on the basis that they were out of time as representations and unrequested by the Tribunal. However, the Tribunal has in fairness considered them, together with AW's reply refuting the points made by the Respondent.

The Law

Section 88 of the 2002 Act provides as follows:

(1) A RTM company is liable for reasonable costs incurred by a person who is—

(a) landlord under a lease of the whole or any part of any premises,

(b) party to such a lease otherwise than as landlord or tenant, or

(c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,

in consequence of a claim notice given by the company in relation to the premises.

(2) Any costs incurred by such a person in respect of professional services rendered to him by another 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.

(3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before the appropriate tribunal only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.

(4) Any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by the appropriate tribunal.

The Applicants' claim

10. The Applicants claim costs of £72,710.30 in respect of the proceedings in the First-tier Tribunal and the Upper Tribunal. They are summarised as follows:

	Costs	VAT	Sub-total
Ashley Wilson Solicitors costs	£37,390	£7,478	£44,868
Counsel's fees	£15,900	£3,180	£19,080
Management Fees	£6,750	£1,350	£8,100
Other disbursements	£662.30	£0.00	£662.30
		Total	£72,710.30

11. The Applicants distinguish between, on the one hand, costs incurred following receipt of the claim notice on 5 October 2016 and up to the service of the counter notice on 9 November 2016 and on the other hand, costs incurred in connection with the proceedings in the First -tier and Upper Tribunals. They submit that the first set of costs was reasonably incurred and are therefore recoverable under section 88(1) of the 2002 Act. They further submit that because the RTM application was dismissed by the Tribunal the second set of costs is not subject to the Tribunal's jurisdiction. The Applicants reason that section 88(3) (erroneously referred to by them as s. 88(2)) provides that a RTM company is liable for *any costs* incurred by the landlord in circumstances where the claim is dismissed (emphasis supplied). The Applicants say it follows that such costs are recoverable in full and are immune from scrutiny by the Tribunal. AW's services were provided mainly by an assistant solicitor, Jade Wilson assisted to a limited extent by a partner, Mr Anthony ("Tony") Wilson.

The Respondent's case

12. The Respondent's objection to the sum claimed is based on the following assertions. First that Jade Wilson's hourly charging rate should be reduced from £250 to £165. (No issue is taken with the hourly rate of £300 for work carried out by Mr Anthony Wilson (35 years PQE). Second, that some tasks charged for by AW were unnecessary and/or excessive. Third, that counsel's fee for the First-tier Tribunal hearing was excessive. Fourth, that the costs of the Management Company (the second Applicant) should be disallowed as being unreasonable and disproportionate because the client and solicitor were "effectively the same person." The Respondent submitted that the recoverable costs should be £23,538. (This sum excludes VAT). The detailed differences between the costs claimed by the Applicants and those argued by the Respondent to be reasonable are set out in the spreadsheet attached to this decision. As will be seen there is a considerable discrepancy between

the two sets of figures. It is implicit in the Respondent's case that the Tribunal has jurisdiction over all the costs claimed.

The Applicants' response.

13. In their response the Applicants reiterate that section 88(3) (again erroneously referred to as section 88(2)) renders the RTM company liable for any costs incurred by the freeholder landlord or Management Company as parties to the tribunal proceedings (both the F-tT and the Upper Tribunal proceedings) because the (First-tier) Tribunal dismissed the claim. They therefore maintain their submission that the costs incurred from 10 November 2016 are recoverable in full as "there is no jurisdiction under this section for the [T]ribunal to determine the reasonableness of these costs which has not been disputed by the Respondent."

14. With regard to Jade Wilson's charging rate, the Applicants say that they have instructed AW on various matters since September 2012 at an hourly rate of £250 plus VAT for an assistant solicitor of similar experience to Jade Wilson (i.e. 3 years PQE). The Applicants state that £250 + VAT per hour is a reasonable charging rate for a solicitor of Jade Wilson's experience based in postcode SW3 in Central London who specialises in claims under the 2002 Act and under the Leasehold Reform Housing and Urban Development Act 1993. They say that the Respondent has not produced any evidence or reasoning for proposing that the hourly charge out rate should be reduced to £165 plus VAT.

15. The Applicants refer to two Leasehold Valuation Tribunal decisions. The first is *Hampden Court Freehold Limited v Danaglade Ltd* (LON/ENF/785/02) where (in an enfranchisement case) the tribunal held that a landlord is not obliged to find the cheapest or a cheaper solicitor but only in effect to give instructions as he would ordinarily if he himself would bear the costs. In the second case, *9 Corinne Road RTM Co. Ltd* (LON/OOAU/LCP/2008/0007) the tribunal determined that a broad brush approach should be taken to section 88 costs and that a landlord is not obliged to reduce costs otherwise reasonably incurred by him to the cheapest rates or to rates acceptable to tenants.

Discussion

16. Chapter 1 of Part 2 of the 2002 Act provides for the Right to Manage premises to which that Chapter applies. The right is exercisable by a Right To Manage Company established under that Chapter serving a claim notice on the landlord or another party to the lease (or to a tribunal appointed manager). If the claim is contested by one or more recipients of a claim notice serving a counter notice, the Company may apply to the F-tT, under section 84(3) of the Act for a determination that it is entitled to exercise the RTM.

17. Section 88(1) of the 2002 Act provides that where a RTM Company seeks to exercise the right to manage, the Company is liable for the reasonable costs incurred by the landlord or another party to the lease (or to a tribunal appointed manager) in consequence of a claim notice given by the Company under the Act.

18. This general principle is qualified first by section 88(2) of the Act, which provides that where the costs arise as a result of professional services having been afforded to the landlord or other person entitled to costs under s. 88(1), the costs shall only be regarded as reasonable 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 would have been personally liable for such costs. In other words the question must be asked whether the landlord would reasonably be expected to have incurred those costs had they not been recoverable from the Company. To the extent that that they would not have been expected to be so incurred they are deemed to be unreasonable.

19. The second qualification, contained in section 88(3), is that any costs incurred by the landlord or another as party to tribunal proceedings under the RTM provisions of the Act are recoverable only if the Tribunal dismisses the claim.

20. Finally, section 88(4) provides that any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by the First Tier-tribunal.

21. The Applicants, who are the freeholder landlord and the Management Company, argue that the effect of the reference in section 88(3) to "any costs incurred in connection with tribunal proceedings under Chapter 1 (of Part 2 of the Act) " means that, because the RTM claim was dismissed, those costs are recoverable in full and not subject to scrutiny by the Tribunal. No authority is cited in support of this novel interpretation which the Tribunal considers to fly in the face of section 88 when read as a whole. The structure of section 88 is that by virtue of subsection (1) only reasonable costs incurred (including those incurred in connection with tribunal proceedings) are recoverable (subject to subsection (2)). However, any costs (i.e. any such costs) incurred as a party to tribunal proceedings are recoverable only if the tribunal dismisses the RTM claim. Section 88(4) applies in default of agreement to all costs for which the RTM Company is liable. This interpretation is supported by decisions of the Upper Tribunal (Lands Chamber) in *Post Box Ground Rents Limited v The Post Box RTM Company Limited* [2015] UKUT 0230 and *Fencott Limited v Lyttelton Court RTM Companies* [2014] UKUT 27. In the *Fencott* case the Deputy President, Martin Rodger QC, stated

"I am satisfied that in both appeals, section 88(1) of the 2002 Act entitles the successful appellants to recover from the respondent companies the reasonable costs incurred by them in consequence of the

claim notices given by the companies in relation to the premises, Section 88(1) creates a liability, in quite general terms, making an RTM company liable for reasonable costs incurred "in consequence of a claim notice given by the company in relation to the premises." That general liability to meet reasonable costs incurred is subject to further qualification by sections 88(2) and (3). Section 88(2) elaborates on the meaning of "reasonable costs", and is relevant to the quantification of the liability in the event of a dispute, but not to the existence of the liability in principle. Section 88(3) then creates an exception to the liability which arises under section 88(1). That exception prevents the recovery of costs incurred in proceedings before the appropriate tribunal unless a condition is satisfied, namely, the dismissal by that tribunal of the RTM company's application. That exception to the general rule is limited in its scope to the costs incurred as party to any proceedings under the Chapter before the appropriate tribunal."

22. The Tribunal has therefore determined the reasonableness of all disputed costs, whether incurred before, or as a party to, proceedings in the First-Tier and Upper Tribunals. The costs, which the Applicants seek, are detailed, together with the Applicants' comments, on the spread sheet attached to this decision. Also shown on that spread sheet are the Respondent's comments together with the sums agreed or disputed by the Respondent. The costs determined as reasonable by the Tribunal are set out in the final column of the spread sheet.

Disputed costs (1) Solicitors fees from receipt of claim notice to service of counter notice.

23. Subject to the exception dealt with in paragraph 25 below the Respondent accepts the time spent by AW on dealing with the claim notice and drafting and serving the counter notice (amounting in total to 5.7 hours) but disputes the hourly rate of £250. The Applicants submit that they were entitled to employ solicitors of their choice in dealing with the claim notice received from the Respondent. They say that there is no evidence to suggest that the Applicants would not have instructed Ashley Wilson (AW) had they not been able to recover the costs from the Respondent. They also state that there is no evidence that it would have been reasonable for AW to have used a solicitor at a lower charging rate for dealing with a complicated case of this kind.

24. The Respondent argues for a rate of £165 per hour. This is presumably derived from the Solicitor's Guideline Hourly Rates issued in 2010 (and left unchanged on review in 2014) by HM Courts and Tribunal Service. The hourly rate specified for a London Grade 3 Band C solicitor (i.e. less than 4 years PQE) is £165 .The hourly rate for a London Grade 3 Band A solicitor (i.e. 8+ years PQE) is £229-£267. The Tribunal was told that Jade Wilson, who investigated the claim and prepared and served the counter notice, was a 3 years PQE assistant solicitor. (We

were not told the date when she qualified). This would make her Band C. AW's postcode is SW 3, which is London Grade 3.

25. The question therefore is whether it is unreasonable for the Applicants to have engaged Jade Wilson, a Band C solicitor, to handle the case at an hourly fee rate of £250. The Guideline hourly rates are only guidelines and they were last fixed in 2010. On balance the Tribunal determines that, taking all relevant factors into account, including the unchallenged comparative hourly fee rate of £300 charged by Mr Tony Wilson, a partner of 35 years PQE, a reasonable hourly rate would have been £200. The LVT decisions cited by AW are specific to the facts of those cases.

26. The exception referred to in paragraph 22 above relates to the charge by AW of £14,250 in respect of "perusing official copies of all the Land Registry titles, plans and leases to the flats and the building to establish whether there was a sufficient number of participating members" as detailed in AW's Costs Statement 5th October 2016 to 9th November 2016. AW says that this task took 65 hours at £250 per hour (amounting to £16,250) although they had limited their charge to £150 per flat (amounting to £14,250).

27. The Respondent submits that this cost was unnecessary and excessive because the Applicant landlord already had the leases and ownership details and checking the membership against its records should have taken no more than two hours (at £165 per hour).

28. In its response submission, AW states that it was necessary to verify that the members of the RTM Company still owned the flats because "some records that our clients have date back to the original granting of the leases." The response further states that

> "it was also necessary to check in detail the provisions of each lease and the title plans to ensure that the building and tenants qualified for the right to manage claim which entailed a detailed investigation. Of course without investigating the leases, plans and up-to-date titles in detail then we would not have been able to establish that the building was not a self-contained building or part of a building which eventually precluded the Right to Manage company from making a valid claim."

29. AW is therefore asserting that the 65 hours was reasonably spent not only in establishing whether there were a sufficient number of participating tenants but also whether the building was a self contained building or part of a building by reference to the chain of titles in the development.

30. The Tribunal had some concern that in its covering letter to the Respondent, when serving the counter notice, AW had stated

"We anticipate that this firm's recoverable fees *to date* pursuant to section 88 of the Act are £750 + VAT and disbursements for investigating the matter if it is accepted that the Company does not have the right to manage the Premises. However, if the right to manage is disputed then *we will incur* costs in respect of the investigation of the Company's claim which we have fixed at £150 + VAT and disbursements per flat, i.e. £150 x 95 = £14,250 + VAT and disbursements."

This suggests that the investigation of title work had not been carried out at that stage. However, if that were the case it is difficult to understand how the Applicants were able to assert in the counter notice that the Respondent was not entitled to claim the RTM.

31. If on the other the work was completed at some stage, and there is no evidence to rebut AW's statement that it had been done, the question arises as to whether the costs were reasonably incurred. The Tribunal finds that they were not. It is far from clear why it was considered necessary to carefully investigate the title to, and provisions of, every lease in order to establish "whether there were a sufficient number of participating tenants." The leases were in the same form, as submitted by the parties at the substantive hearing, when the Tribunal was provided with a copy of one lease by way of sample.

32. Section 75(2) of the 2002 Act provides that a person is the qualifying tenant of a flat if he is the tenant of the flat under a long lease. At least half of the members of the RTM Company must be qualifying tenants (section 79(5) of the 2002 Act). Thus all that the Applicants (and therefore AW) needed to do was verify that half of the members of the RTM Company were qualifying tenants. In the present case the Applicants knew that all the flats were held on long leases. The Landlord had been given a list of the members of the RTM Company. It was then simply a matter of checking those names against the office copies of the lease titles supplied by HM Land Registry. This did not require a solicitor who charged a fee rate of £250 per hour.

33. The Tribunal considers that this could have been done in 4 hours and that a sum of £800 in respect of the same would be reasonable. The Tribunal finds that whilst it was also reasonable as a separate matter to examine the title structure of the buildings in the development in order to help decide whether the building in question was a qualifying building, it is far from clear that this would take more than two days. The Tribunal considers that a sum of £1,200 would be reasonable for this task (6 hours at £200 per hour).

Disputed costs (2): Solicitor's costs in preparing for the F-tT hearing

34. The Respondent does not dispute the time taken on the various matters by AW when preparing for the F-tT hearing. However, it does dispute the hourly rate of £250 and also disputes the time taken over three

particular matters: (1) correspondence with client (2.1 hours) (2) correspondence with Tribunal (2.7 hours) and (3) correspondence with the RTM Company's representatives (3.4 hours). These times include that spent by AW dealing with the RTM Company's application to the F-tT for permission to appeal the Tribunal's decision.

35. The Tribunal agrees with the Respondent that the hourly rate of £250 is unreasonable for the reasons given above and should be reduced to £200. However, it has no evidence that the time taken on these matters was excessive. At the request of the Tribunal, (see above) AW produced time sheets which detailed the number of communications in categories (1) to (3) above together with the time taken, which the Tribunal does not consider to have been excessive. The Application to the Tribunal by the Respondent for permission to appeal the section 84(3) decision was made out of time and entailed extensive communications between the parties and the Tribunal before the Tribunal extended the time limit. The sums claimed are therefore allowed subject to the reduction in the hourly rate from £250 to £200.

Disputed costs (3): Solicitor's costs in relation to the time from refusal of the application for permission to appeal by the Tribunal to issue of the final Upper Tribunal decision dismissing the appeal.

36. The Respondent does not dispute the time taken on most of the matters under this head. It disputes the hourly rate of £250 for the services of Jade Wilson. The Tribunal agree that the rate of £250 is unreasonable for the reasons given above and reduces it to £200 accordingly. The Respondent also argues that sending the hearing bundle in relation to the appeal to counsel did not require a solicitor and submits that the cost of £375 should be reduced to £87.50. AW says that a solicitor was required to consider the bundle and ensure that all relevant documents were enclosed. The Tribunal agrees with AW but reduces the reasonable cost to £200 per hour (i.e. £300).

37. Furthermore, the Respondent also disputes three time periods under this head. The first is 1 hour at £250 per hour and 1.5 hours at £300 per hour for reviewing the Note submitted by counsel for the Respondent to the Upper Tribunal judge requesting a change to the draft decision. The Respondent says that £700 is excessive and should be reduced to £465 (i.e. 1 hour at £165 and 1 hour at £300). The Tribunal considers that 1 hour for each solicitor at rates of £200 and £300 respectively was reasonable and accordingly allows £500.

38. The second period is of 1.5 hours at £250 per hour for considering and approving the Applicants' response to the Note. The Respondent accepts the time but not the hourly rate. The Tribunal agrees that the rate of £250 is unreasonable for the reasons given above. The allowed hourly rate is reduced to £200.

39. The third period is 2 hours at £250 per hour and 2 hours at £300 per hour for reviewing the published Upper Tribunal decision. The Respondent says that this is not a chargeable item. The Tribunal agrees that it was necessary to read the decision and convey the outcome to the client. However, the outcome was that the appeal was dismissed. Quite apart from the duplication involved in having it read by two solicitors it did not require 4 hours, or indeed 2 hours, to read the decision and convey the outcome to the Applicants, who had successfully defended the appeal. The Tribunal allows as reasonable a charge of £300.

Disputed costs (4): Correspondence by solicitors with client (3.5 hours), Counsel (6.8 hours), Tribunal (3.1 hours) and Respondent's representatives (1.8 hours) all charged at £250 per hour.

40. The Respondent says the time spent on all these matters was excessive and that the costs should be reduced to the sums requested. At the request of the Tribunal AW produced time sheets with regard to all of these matters and the Tribunal accepts that the time spent was not excessive. It is accordingly allowed but at the rate of £200 per hour rather than £250.

Disputed costs (5): Costs of (a) preparing the costs statement (3 hours at £250 per hour), (b) receiving and reviewing the Respondent's case in respect of costs (1.5 hours at £250 per hour), (c) preparing and serving the Applicants' reply (3 hours at £250 per hour) and (d) preparing the bundles and documents in relation to the costs hearing (6 hours at £250 per hour).

41. The Respondent disputes the time in relation to (a) and seeks a reduction to 2 hours. It accepts the time in (b) but says that the rate should be £165 per hour. The Respondent seeks a reduction in time for (c) to two hours at £165 per hour and says that (d) does not require a solicitor and should be reduced to £500. The Applicants say that they have incurred extra costs because they have been required to prepare and serve two sets of bundles to the Tribunal and the RTM Company due to the latter's failure to submit the statement of items in dispute within the Tribunal's deadline. They have therefore adjusted their claim under (d) upwards to 9 hours.

42. The Tribunal considers that with regard to (a) and (b) the hourly rate should be £200 per hour. It does not have any evidence that 3 hours was unreasonable with regard to (a) or (c). With regard to (d) the Tribunal finds that even including time to research case law 9 hours is unreasonable for preparation and serving of the costs bundle. It considers that 6 hours at £200 per hour was reasonable, the use of a solicitor being necessary for the reasons given by the Applicants.

Disputed costs (6): Counsel's fees

43. The Respondent says that counsel's fee for the F-tT proceedings was excessive and should be reduced by £4000. The Applicants submit that counsel's fee was not excessive for preparing and attending a whole day hearing with site inspection. The Applicants noted that a QC had represented the Respondent at the Upper Tribunal hearing and it could reasonably be expected that his fee would be considerably higher than that of the Applicants' counsel.

44. The Tribunal has no evidence that counsel's fee for the F-tT hearing was unreasonable. Mr Upton is an experienced counsel with special expertise in the area of RTM and whilst his brief fee is undoubtedly at the top end of the range the Tribunal finds that it cannot be said to be self evidently unreasonable.

Disputed costs (7): Management Company fees

45. This head of charge has proved to be highly contentious. The freeholder, Broad Quay North Block Freehold Limited and the Management Company, Broad Quay Management Company Limited, are both privately limited companies registered in England and Wales. Mr Anthony Wilson, who is as noted above, a partner in AW, is the sole Director of both Companies. The address of both companies, 26 Ives Street, London SW3 2ND is the same as that of their solicitors, AW.

46. By an invoice dated 30 March 2017 the Management Company requested payment from the freeholder company of £4,800 plus VAT (total £5,760). The invoice was raised by the Management Company c/o HML Group, Trym Lodge, 1 Henbury Road, Westbury on Trym, Bristol BS9 3HQ. HML Group is the Company to whom day to day management of the premises has been outsourced by the Management Company. The invoice was stated to be in respect of "costs incurred in providing instructions to the freehold company in relation to the building, to including travelling and attending the hearing and all meetings and correspondence and research concerning the same limited to 16 hours." The charge rate is £300 per hour.

47. By an invoice dated 17 May 2018 the Management Company requested payment from the freeholder company of £1,950 plus VAT (total £2,340) in respect of "costs incurred since 31st March 2018 to date in providing instructions to the freehold company in relation to the Upper Tribunal hearing, to include travelling and attending part of the hearing and all meetings and correspondence and research concerning the same limited to 6.5 hours." The charge rate is again £300 per hour.

48. In response to a request by the Tribunal for further details, AW stated that HML Group had played no part in the case and that the costs referred to in the second invoice "were incurred by Mr Anthony

Wilson as consultant costs as representative of the Management Company and freehold company for which the freehold company is ultimately liable as they are not costs incurred in relation to management. The consultant's charge out rate is £300 plus VAT per hour." The research in the second case involved, according to AW, "reviewing the notice of appeal, Respondent's notice and some 339 pages of appeal bundle documents and emails, with Jade Wilson at AW. The attendance of Mr Wilson at the appeal hearing was limited to 3 hours + one hour travel time. The cost of reviewing the appeal documents was limited at 2.5 hours despite it having taken considerably longer than that. No charges had been made for reviewing both the application to amend the draft appeal decision and a lengthy case cited by way of precedent by the Respondent's legal representatives."

49. The Respondent says that the Management Company fees should be disallowed as being unreasonable and disproportionate because the client and solicitor were "effectively the same person." In essence the Respondent submits that there is a degree of artificiality about the arrangement as to Mr Wilson's representation of the Applicants and associated costs because of Mr Wilson's several roles. Indeed the Respondent goes further and argues that the invoices were shams issued with no expectation of settlement. It says that an examination of the published accounts for both the Applicant Companies shows that these sums have never been paid or appeared in the relevant accounts.

50. In its response to the Tribunal's request for further information AW stated that the freeholder had not paid the invoice of 17 May 2018 (and presumably the earlier invoice) because "the freehold company owes the management company for the service charge shortfall so it will be a contra entry by accountants."

51. The Applicants further state that the client and solicitor are not in law the same person but are completely different legal entities. They state that Jade Wilson has completed the bulk of the legal work carried out by AW and the Management Company has its day-to-day work outsourced to a managing agent (HML, which has had no part to play in these proceedings). They say that there is no attempted double recovery of the costs incurred.

52. The reality is thus that the Applicant freeholder company and the Management Company, which are both controlled by Mr Tony Wilson, engaged his own firm of solicitors, of which he is a partner, to represent them in this matter. This is perfectly acceptable, as the Respondent acknowledges. However, we are also told that quite separately the Applicant freeholder company engaged the Management Company to provide services to the freehold company in connection with the claim and proceedings in both the First-tier and Upper tribunal and in turn the Management Company engaged its sole Director, Mr Tony Wilson to provide those services. We were not provided with written evidence

of any of these contracts or any evidence that Mr Wilson had been paid by the Management Company for his services. The Applicants have been perfectly frank in stating that this was the only way that Mr Wilson could be remunerated for his work, given that he is not an employee of the Management Company. It is the legitimacy of this arrangement that is challenged by the Respondent.

53. Whilst it is legitimate for a company to engage its sole director to perform services for the company, it is not clear what consultancy services were being provided in this case by Mr Wilson. The Management Company was set up to manage the services at the property and to levy service charges to cover the costs of the same. Indeed we are told that the day to day management of the development was carried out by HML. Mr Wilson is not an employee of the Management Company. He is a Director. The fact is that had there not been a claim or tribunal proceedings it is most probable that Mr Wilson would not have performed any services for either of the Applicant Companies.

54. The case for the Applicants before the Tribunal was based on legal arguments and turned on the application of the relevant law to the building as physically configured and defined in the relevant title documentation and plans. The case before the Upper Tribunal was based on whether the First-tier tribunal had erred in law. It seems therefore that Mr Wilson's contribution was based on his legal expertise and opinion. However, the Applicants were legally represented by AW and at the hearings by counsel. The Tribunal therefore considers that there is indeed merit in the Respondent's argument that the costs incurred by the freeholder were excessive and a duplication and they are accordingly disallowed as being unreasonably incurred.

RIGHT OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, that person shall include with the application for

permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Martin Davey
Chairman