FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AJ/LRM/2018/0034**
Property	**:**	**Holyoake House, Holyoake Walk, London W5 1QW**
Applicant	**:**	**Holyoake House RTM Company Limited**
Respondent	**:**	**AR. & V Investments Limited**
Type of application	**:**	**Right to Manage – costs under section 88(4) Commonhold and Leasehold Reform Act 2002**
Tribunal member	**:**	**Judge P Korn**
Date of decision	**:**	**11th March 2019**

DECISION

Decision of the tribunal

The tribunal determines that costs of £3,189.00 are recoverable by the Respondent from the Applicant under section 88 of the Commonhold and Leasehold Reform Act 2002 ("**CLARA**").

The application

1. The Applicant originally sought (i) a determination under section 84(3) of CLARA that on the relevant date it was entitled to acquire the right to manage in respect of the Property and (ii) a determination under section 88(4) of CLARA as to the costs payable by it to the Respondent in relation to the claim for the right to manage.

2. By email dated 14th December 2018 the Respondent admitted that the Applicant was entitled on the relevant date to acquire the right to manage, and accordingly the Applicant then withdrew that aspect of its application. The remaining part of the application is for a determination as to the costs payable by the Applicant to the Respondent.

Paper determination

3. In its directions the tribunal stated that it would deal with the case without an oral hearing unless either party requested a hearing. Neither party has requested an oral hearing and therefore this matter is being dealt with on the papers alone.

Compliance with directions

4. In its revised directions dated 9th January 2019 the tribunal required the Applicant to do the following:-

   - *"Send … to the Respondent … a statement of case and any legal submissions … [which] shall identify any elements of the claimed costs that are agreed and those that are disputed (with brief reasons). The statement may usefully … specify alternative costs that are considered to be reasonable…*

   - *[Provide] copies or details of any comparative cost estimates or accounts upon which reliance is placed; [and provide] copies of any other documents upon which reliance is placed*

   - *… send to the tribunal two copies of a bundle of documents relating to the outstanding issues, supplying one copy to the Respondent. The bundle shall be indexed, have numbered pages and, so far as possible, be in chronological order …".*

Respondent's position

5. The Respondent is the landlord of the Property. The Applicant served a claim notice on the Respondent in September 2018 claiming the right to manage in relation to the Property. The Respondent served a counter-notice disputing the claim, and then the Applicant applied to the First-tier Tribunal ("**FTT**") for a determination that it was entitled on the relevant date to acquire the right to manage and also applying for a determination in relation to the Respondent's costs. Following correspondence and the provision of further information, the Respondent then accepted that the Applicant was entitled on the relevant date to acquire the right to manage.

6. In support of its claim for costs, the Respondent has provided a breakdown of the work undertaken and the time taken to carry out each task, together with a breakdown of the disbursements. It has also included copy invoices containing a narrative and has provided details of the hourly rates and grades of the partner and trainee solicitor involved.

Applicant's position

7. The Applicant has stated as follows by way of statement of case:-

> *"We find it difficult to understand their statement of costs. We are willing to pay all reasonable costs relating to the transfer of the management, but it would appear that a lot of the listed costs are due to correspondence between the Landlord and his solicitors and unfounded communications where they were asking for unnecessary information."*

The relevant legal provisions

8. Section 88 of CLARA 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.

Tribunal's decision

9. As noted above (see paragraph 4), the Applicant was required to comply with certain directions when compiling its case and communicating with the tribunal. However, it has failed to identify those elements of the claimed costs that are agreed and those that are disputed (with reasons), it has failed to specify alternative costs that are considered to be reasonable, it has failed to provide copies or details of any comparative cost estimates or accounts upon which reliance is placed and has not provided any other copy documents upon which reliance is placed. It has also failed to provide a bundle of documents which is indexed or which has numbered pages or which is consistently in chronological order, and this has made it harder than it should have been to go through the hearing bundle.

10. In addition, the Applicant's case amounts to little more than an assertion that the costs are too high, albeit that the Applicant makes the specific points that some of the listed costs are due to correspondence between the Respondent and its solicitors and that some costs relate to 'unfounded communications' where the Respondent's solicitors were (in the Applicant's view) asking for unnecessary information.

11. As regards the Applicant's first objection, I do not accept the proposition that a party claiming costs under section 88 of CLARA is not entitled to recover those elements of its costs which relate to communications between that party and its solicitors. Provided that the costs so incurred are reasonable, seeking advice from and liaising

with its own solicitor is a normal and potentially important part of the process of considering and dealing with a claim notice.

12. As regards the second objection, it was open to the Applicant to identify which specific requests from the Respondent's solicitors it considered unnecessary and why, but it has not done so. Based on the limited information that the Applicant has provided, I am not satisfied that any of the costs claimed were incurred as part of an unnecessary request for information.

13. Turning to the Respondent's own written submissions, I note that Mr Hardwick has been charged out at £350 + VAT per hour, which is high for a Grade A solicitor in Banbury. It is also possible that less time could have been allocated to some of the tasks carried out by the Respondent's solicitors, although in the absence of a sharper challenge from the Applicant – or even a request on the Applicant's part for the Respondent to justify any specific items of charge in more detail – it is very difficult to say with any degree of confidence that more time was spent than necessary, other than to express a general feeling that overall the amount of time taken seems a little on the high side.

14. However, the overall amount being claimed (£3,189.00 inclusive of VAT) is significantly less than the overall amount of time logged (£5,178.00 inclusive of VAT). In my view, that difference accommodates my concerns about the hourly charge-out rate and any concerns that I might have as to the total amount of time taken. Also, I note that the Respondent has correctly not sought to recover any costs incurred in connection with the FTT proceedings.

15. In conclusion, in the absence of a sharper challenge from the Applicant, I consider that the costs claimed by the Respondent are reasonable in amount, recoverable under section 88 of CLARA and payable in full.

Name: Judge P Korn **Date:** 11th March 2019

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. 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.