



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

<b>Case reference</b>	:	<b>Lon/00AM/LCP/2020/0005</b>
<b>Property</b>	:	<b>Flats at 36 Dunsmure Road London N16 5PW</b>
<b>Applicant</b>	:	<b>Assethold Limited (Company number 02276277)</b>
<b>Representative</b>	:	<b>Scott Cohen Solicitors Ltd</b>
<b>Respondent</b>	:	<b>36 Dunsmore Road RTM Company Limited</b>
<b>Representative</b>	:	<b>Dean Wilson LLP; Solicitors</b>
<b>Type of application</b>	:	<b>Application to decide the costs to be paid by an RTM company under s.88(4) of the Commonhold and Leasehold Reform Act 2002</b>
<b>Tribunal members</b>	:	<b>Judge Professor Robert M. Abbey</b>
<b>Date of paper determination</b>	:	<b>4<sup>th</sup> May 2021</b>
<b>Date of decision</b>	:	<b>4<sup>th</sup> May 2021</b>

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**COSTS DECISION**

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**Summary of the tribunal's decision**

- (1) The costs and surveyor's/management fees are assessed as set out below, the original claim stated first followed by the amounts allowed by the Tribunal: -

- (1) Legal fees £1,063.92 and management fees of £240.00 - assessment and response to Claim Notice – 8 July 2019. Schedule is page 33 of the trial bundle; assessed at nil for both.
- (2) Legal fees £1,419.00 and management fees of £1,200.00 - costs in connection with the FTT Proceedings LON/00AM/LRM/2019/0027. Schedule is page 50 of the trial bundle; assessed at nil for both.
- (3) Legal fees £1,196.04 and management fees of £360.00 – assessment & response to Claim Notice – 31 March 2020. Schedule is page 64 of the trial bundle; assessed at £200 plus VAT for the surveyor's/management fee and £1196.04 for the legal fees claimed by the applicant
- (4) Legal fees £1,072.08 and management fees of £240.00 - assessment and response to Claim Notice – 3 July 2020. Schedule is page 85 of the trial bundle; assessed at assessed at £200 plus VAT for the surveyor's/management fee and £1072.08 for the legal fees claimed by the applicant
- (5) Legal fees £660.00 and management fees of £480.00 - assessment and response to Claim Notice – 11 September 2020. Schedule is page 103 of the trial bundle; assessed at assessed at £200 plus VAT for the surveyor's/management fee and £660.00 for the legal fees claimed by the applicant

### **Background**

1. The Tribunal has received an application under section 88(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act"), to decide the costs payable by a Right To Manage (RTM) company in respect of Flats at 36 Dunsmure Road London N16 5PW (the "property"). The applicant is the reversioner in respect of the property. The claim for costs on the part of the Applicant follows a series of Notices seeking to acquire the right to manage of the property. The successful Notice finally accepted was that of 11 September 2020.
2. On 9 November 2020, the applicant applied to the Tribunal for a determination of the reasonable costs payable pursuant to section 88(4) of the Act.

### **The issues - Matters not agreed**

3. The applicants claim for costs was not agreed between the parties following the RTM formation and involvement with the management of the property. As a consequence, the applicant made the application to the Tribunal.
4. Five separate claims for costs were made by the applicant. The sums to be determined are:

- (1) Legal fees £1,063.92 and management fees of £240.00 - assessment and response to Claim Notice – 8 July 2019. Schedule is page 33 of the trial bundle.
  - (2) Legal fees £1,419.00 and management fees of £1,200.00 - costs in connection with the FTT Proceedings LON/00AM/LRM/2019/0027. Schedule is page 50 of the trial bundle.
  - (3) Legal fees £1,196.04 and management fees of £360.00 – assessment & response to Claim Notice – 31 March 2020. Schedule is page 64 of the trial bundle.
  - (4) Legal fees £1,072.08 and management fees of £240.00 - assessment and response to Claim Notice – 3 July 2020. Schedule is page 85 of the trial bundle.
  - (5) Legal fees £660.00 and management fees of £480.00 - assessment and response to Claim Notice – 11 September 2020. Schedule is page 103 of the trial bundle.
5. The respondent asserted that It should be noted that the costs of the first and second notices have already been the subject of determination by the Tribunal under case reference LON/00AM/LCP/2019/011.

### **The Directions**

6. The Tribunal issued Directions whereby it was confirmed that this matter was suitable for determination without an oral hearing.
7. Neither party submitted a subsequent request for such a hearing and in these circumstances this determination will be made on the papers submitted by the parties.
8. Neither party asked the tribunal to inspect the property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination.

### **The Law**

9. Section 88 of the Act states with (4) highlighted in bold by the Tribunal: -

#### ***88 Costs: general***

*(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 tribunal's determination with reasons**

10. To enable the Tribunal to consider the level of the legal fees claimed it noted that Solicitor fees have been billed at the rate of £275.00 per hour for works undertaken by Lorraine Scott, plus disbursements plus VAT. Miss Scott is the principal of the firm acting for the applicant and is a Grade A fee earner. The fee rate billed by Ms. Scott reflects her pre-conversion experience and specialisation within Landlord and Tenant matters being a non-practicing barrister-at-law called to the Bar of England and Wales in 1999 and thereafter having converted to a Solicitor in 2009, whilst having dealt with RTM matters both before and after conversion since 2005. The fee rate billed in this matter reflect the fee rate payable by the Client to the firm under the terms of its instruction which include provision for payment of disbursements. The Tribunal was satisfied that this was an appropriate hourly rate.
11. The first item the Tribunal considered was whether the claim for the first two items at 4(1) and 4(2) above were appropriate given the decision under Tribunal reference LON/00AM/LCP/2019/0011 and 0027. In the decision made by Judge Korn it referenced two

applications, one arising from a claim notice 9 May 2019 and a second one dated 8 July 2019. The decision dealt with costs within it in that regard. On looking at the first and second costs claims the first is headed “Claim notice dated 8 July 2019” and would therefore appear to have been dealt with by Judge Korn. Therefore, no part of this element of the claim at 4(1) will be allowed as to do so would be a duplication. The second bill is headed “36 Dumsmure Road TRM – 84(3) proceedings: case ref LON/00AM/LRM/2019/0027” and would therefore appear to have been dealt with by Judge Korn. Therefore, no part of this element of the claim at 4(2) will be allowed as to do so would also be a duplication.

12. This leaves the three remaining costs claims to be considered by this Tribunal. These are (1) Legal fees £1,196.04 and management fees of £360.00 – assessment & response to Claim Notice – 31 March 2020, Schedule is page 64 of the trial bundle; (2) Legal fees £1,072.08 and management fees of £240.00 - assessment and response to Claim Notice – 3 July 2020; Schedule is page 85 of the trial bundle and (3) Legal fees £660.00 and management fees of £480.00 - assessment and response to Claim Notice – 11 September 2020. Schedule is page 103 of the trial bundle. These represent 4(3) and 4(4) and 4(5) above
13. Therefore, the Tribunal considered next the surveyors fees in 4(3), 4(4) and 4(5) above. These were claimed by Eagerstates Limited. In that regard, the respondents asserted that: -

*“Assethold Limited is a Company with its registered office at 5 North End Road, Golders Green, London, and its Directors are Esther Gurvits and Joseph Gurvits, .... Eagerstates Limited is a Company registered to 5 North End Road, Golders Green, London, NW11 7RJ whose Secretary is Esther Gurvits and whose Directors are Esther & Joseph Gurvits. There is clearly no arm’s length relationship between the Applicant and Eagerstates Limited who are therefore likely to be the mouthpiece of their client. It is not understood how the same directors could have undertaken work to “consult and meet freeholder to advise....” In any event, it is the Respondent’s case that the Applicant’s Managing Agent did not need to incur any charges under any of the Notices where there was a Counter-Notice objecting to the right to manage and the right to manage application was then subsequently withdrawn. The only Notice in respect of which the Agents may have incurred charges is under the final Notice of 11 September 2020, for which it would appear that £400 plus VAT is sought, [although Item 5 in the document of 9 November 2020 refers to a second Claim Notice of 3 July 2020. It is presumed this is an error.] The Managing Agents’ fee are not properly substantiated in the application.”*

14. The Tribunal then noted that the applicant asserted that: -

*“Assethold (The client) and Eagerstates (The client’s agent) are two separate entities. Eagerstates itself is an organisation with multiple employees and clients – they manage developments for multiple freeholders and have dedicated property managers for various properties. These individual employees of Eagerstates hold the management information for the property (not officers of the company) and have been the liaison with the ‘clients agent’ throughout. A company owned by the landlord can act as the managing agent provided the arrangement is not a sham (Skilleter v Charles [1992] 1EGLR 73)”.*

15. The Tribunal is not persuaded by the respondent’s assertions in this regard and considers the arrangement between these two legal entities to be such that charges are appropriate. The Tribunal went on to consider the reasonableness of these charges.
16. The surveyor’s fees are £360, £240 and £480 for each of the three remaining claims. They are described as management fees. The respondent says of these fees that: -

*“the charges charged by the Applicants are both excessive and generic due to the same description being applied to all invoices with exactly the same time spent on each occasion.....on each subsequent Notice the Applicant only needed to be satisfied as to the validity of the Notice itself, (which was a legal matter and not a matter for the Agents) and service of the same, none of which would have needed to involve the Agents directly. The suggestion by the Applicant that each claim therefore required the same level of detail is not accepted.”*

17. In reply the applicant says that the fees are sums that the applicant would pay themselves within the terms of the management agreement with the agents. The applicant also referred the Tribunal to the case of *Columbia House Properties (No 3) Limited and Imperial Hall RTM Company Limited* [2014] UKUT 0030 (LC) being a decision of the Upper Tribunal which upheld the recovery of the management fee as a professional fee.
18. The Tribunal was satisfied that the fees are fees that can indeed be claimed in a case of this nature and therefore turned to the level of the fees as to their reasonableness. In the previous decision made by Judge Korn he noted that it was reasonable for the managing agent to have some albeit limited involvement at this stage to co-ordinate a management response to the RTM claim. He considered a charge of £200 plus VAT to be reasonable for that work. This was helpful guidance to this Tribunal.
19. Turning then to the charge at 4(3) the amount claimed was £360 being £300 plus VAT of £60. Having reviewed the narrative description of

the activities of Eagerstates the Tribunal took the view that the same approach adapted by Judge Korn was appropriate in this regard. Therefore, the Tribunal determines that £200 plus VAT to be reasonable for that work. Turning then to the charge at 4(4) the amount claimed was £240 being £200 plus VAT of £40. Having reviewed the narrative description of the activities of Eagerstates the Tribunal took the view that the same approach adopted by Judge Korn was appropriate in this regard. Therefore, the Tribunal determines that £200 plus VAT as originally claimed to be reasonable for that work. Finally turning then to the charge at 4(5) the amount claimed was £480 being £400 plus VAT of £80. Having reviewed the narrative description of the activities of Eagerstates the Tribunal took the view that the same approach adapted by Judge Korn was appropriate in this regard. Therefore, the Tribunal determines that £200 plus VAT to be reasonable for that work.

20. The legal fees are £1196.04, £1072.08 and £660 for each of the three remaining claims. The first of these bills being at 4(3) above was in respect of work covered by the title “36 Dunsmure Road RTM – Claim notice 31 March 2020”. Essentially the respondent says that there was excessive correspondence and duplication. The applicant says that the time billed reflects the time spent by the solicitor dealing with the claim. The applicant considers the work and checks carried out by its solicitor were necessary to act with reasonable diligence to assess and evaluate their legal position in this matter and respond accordingly. Being in mind the number of notices involved in this case the Tribunal considers this to be a reasonable position to adopt and therefore considers the legal fees at 4(3) to be appropriate and reasonable and are therefore approved as submitted to the Tribunal at £1196.04.
21. The second of these bills being at 4(4) above was in respect of work covered by the title “36 Dunsmure Road RTM – Claim notice 3 July 2020”. Essentially the respondent says that there was excessive correspondence and duplication. The applicant says that the time billed reflects the time spent by the solicitor dealing with the claim. The applicant considers the work and checks carried out by its solicitor were necessary to act with reasonable diligence to assess and evaluate their legal position in this matter and respond accordingly. Being in mind the number of notices involved in this case the Tribunal considers this to be a reasonable position to adopt and therefore considers the legal fees at 4(4) to be appropriate and reasonable and are therefore approved as submitted to the Tribunal at £1072.08.
22. The third of these bills being at 4(5) above was in respect of work covered by the title “36 Dunsmure Road RTM – Claim notice 11 September 2020”. Essentially the respondent says that there was excessive correspondence and duplication. The applicant says that the time billed reflects the time spent by the solicitor dealing with the claim. The applicant considers the work and checks carried out by its solicitor were necessary to act with reasonable diligence to assess and

evaluate their legal position in this matter and respond accordingly. Being in mind the number of notices involved in this case the Tribunal considers this to be a reasonable position to adopt and therefore considers the legal fees at 4(5) to be appropriate and reasonable and are therefore approved as submitted to the Tribunal at £660.00.

**Name:** Judge Professor Robert  
M. Abbey

**Date:** 4<sup>th</sup> May 2021



## **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).