FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AH/LCP/2022/0012**
Property	**:**	**55, Penge Road, London, SE25 4EJ**
Applicants	**:**	**Assethold Limited**
Representative	**:**	**Scott Cohen Solicitors Limited**
Respondent	**:**	**55 Penge Road RTM Company Limited**
Representative	**:**	
Type of Application	**:**	**Application to decide the costs to be paid by an RTM company under s.88(4) of the Commonhold and Leasehold Reform Act 2002**
Tribunal Members	**:**	**Judge Prof R Percival** **Ms M Krisko FRICS**
Date of Decision	**:**	**27 March 2023**

DECISION

The application

1. The Applicant seeks an order under section 88(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of costs payable to it by the Respondent RTM Company. The section is at https://www.legislation.gov.uk/ukpga/2002/15/section/88.

2. The directions were twice amended, but the Respondent failed to respond and was disbarred in a decision made by Judge Bowers on 21 February 2023.

3. The directions allocated the application to the paper track, making provision for the parties to request an oral hearing. Neither party has done so, and we have made this decision on the papers.

4. This was the second time (as far as the Tribunal is aware) that there has been a notice to acquire the right to manage and a counter-notice. The first notice and counter-notice was also the subject of an application under section 88(4), decided by the Tribunal, constituted by Judge Pittaway and Mr Parkinson, on 28 February 2022, under the reference number LON/00AH/LCP/2021/0010.

5. The Respondent did not make an application to the Tribunal under section 84(3), and accordingly the application for the right to manage fell (section 84(5)).

6. The Applicant also applies for the reimbursement of its application fee of £100 under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the 2013 Rules"), rule 13(2). The 2013 Rules are here: https://www.legislation.gov.uk/uksi/2013/1169/contents/made.

The Applicant's case

7. The Applicant's claim for costs falls into two categories.

8. In respect of the solicitors' costs, the Applicant applies for costs incurred by Ms Lorraine Scott of Scott Cohen Solicitors. Ms Scott is a Grade A fee earner. She charges £275 an hour. As is conventional, her charges were calculated on the basis of six minute units. Her total bill, including VAT, was £1,229.22, which included £8.22 as disbursements, in the form of postage costs.

9. The costs incurred were for work undertaken in responding to the claim notice, in particular, an assessment of the claim, advice to the client, preparation and issue of the counter notice and correspondence. The total time charged was 3.7 hours.

10. The second category were the costs of the Applicant's managing agents, Eagerstates Ltd. In Eagerstates' invoice, the costs are broken down by time. Thus, it took three quarters of an hour to notify the freeholder an the solicitor of the service of the right to manage notice; two hours to instruct the solicitors, one and a half hours to instruct the "accounts and management team" on various related matters, and half an hour for a meeting with the freeholder. For this, the total charge was £600, plus VAT.

11. The managing agent's fees are expressed as being payable in accordance with their contract with the Applicant. The obviously relevant provision in that contract is in the appendix listing the charges for additional services, over and above the basic service described in the contract, in respect of which the fixed fee was payable. The relevant entry describes the service as "Providing any form of services to the client over and above this management agency agreement in relation to the exercise by the lessees of … the Right to Manage … ." For this, the fee is expressed as being "minimum £100 + VAT per flat plus £150 + VAT per hour for court appearance". Since, as we understand it, there are six flats in the property, this provision would explain the charge of £600 plus VAT. The Tribunal is aware that a basic fee plus a "menu" of further services is one of the standard forms in which contracts for management agency services are drafted.

12. It is, therefore, not clear to us why the invoice is expressed as relating to timed tasks. However, we note that in the 28 February 2022 decision in respect of the previous section 88(4) application, the managing agent's Mr Gurvits is recorded as saying he did not keep time sheets of time spent on transactions (paragraph [16]). It may be that the times specified for relevant work is Mr Gurvits reaction to that observation.

The Respondent

13. The Respondent is debarred from taking any further part in the proceedings. We note that in her decision to disbar the Respondent, Judge Bowers described the Respondent's representations to her in respect of the disbarring application as not relevant, and some of them as incoherent. We have read those representations and agree.

Determination

14. We consider that it was reasonable for a fee earner of Ms Scott's seniority to undertake the relevant work, and that her hourly fee was a reasonable one. Further, we have considered the breakdown of time spent on the matter to be reasonable. We were assisted by the presentation of a form N260, the form used for summary assessment of costs in the County Court, which breaks down the fees into attendance on the client (£247.50), communications with the opponents (£192) and preparation of documents (£577.50). We have considered both the

hourly breakdown and the total, and conclude that the sums charged and claimed are reasonable.

15. As to the managing agent's fees, a fixed fee in a "menu" of relevant services is a conventional and reasonable way for a managing agent to charge for its services. The £100 per flat is described as a minimum fee, and while the contract gives no basis for quantification above the minimum level, it is the minimum that is being charged in this case. We consider that, once it is accepted (as we do) that this structure for remuneration of an agent is reasonable, a minimum charge of £100 per flat for something as significant as work on a right to manage application is, we conclude, well within the reasonable range of charges. We are not assisted by Eagerstates' time breakdown.

16. We have also stepped back and considered whether a total fee of £1,949.22 is a reasonable one for a landlord reacting to a notice claiming the right to manage and serving a counter notice, and conclude that it is.

17. In the light of our conclusions above, we consider it is also just and equitable to allow the Applicant's application for reimbursement of the application fee.

18. In summary:

    (i) We determine under section 88(4) of the 2002 Act that costs in the sum of £1,949.22 are payable to the Applicant by the Respondent; and

    (ii) We order under rule 13(2) of the 2013 Rules that the Respondent reimburse the applicaiton fee of £100 paid by the Applicant.

Rights of appeal

19. 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 London regional office.

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

21. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application

for permission to appeal to proceed despite not being within the time limit.

22. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 27 March 2023

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance , improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose—

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in

determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court , residential property tribunal2 or leasehold valuation tribunal or the First-tier Tribunal3 , or the Upper Tribunal4 , or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to the county court ;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal4 , to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to the county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on [the appropriate tribunal]1 in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).