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

<b>Case Reference</b>	<b>:</b>	<b>LON/00BG/LCP/2024/0602</b>
<b>Property</b>	<b>:</b>	<b>Cubix Apartments, 42 Violet Road, London E3 3QG</b>
<b>Applicant</b>	<b>:</b>	<b>Avon Freeholds Limited</b>
<b>Representative</b>	<b>:</b>	<b>Scott Cohen Solicitors</b>
<b>Respondents</b>	<b>:</b>	<b>Cubix Apartments RTM Company Limited</b>
<b>Representative</b>	<b>:</b>	<b>Canonbury Management</b>
<b>Type of Application</b>	<b>:</b>	<b>Determination of costs under section 88(4) of the Commonhold and Leasehold Reform Act 2002</b>
<b>Tribunal Member</b>	<b>:</b>	<b>Judge J P Donegan</b>
<b>Date of Paper Determination</b>	<b>:</b>	<b>19 March 2025</b>
<b>Date of Decision</b>	<b>:</b>	<b>19 March 2025</b>

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**DECISION**

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## **Decisions of the Tribunal**

- A. The following costs are payable by the respondent to the applicant, pursuant to section 88 of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act'):**
- **Section 88(1) costs - £2,566.95**
  - **Section 88(3) costs - £1,645.80**
- B. The respondent shall pay the sum of £110 (One Hundred and Ten Pounds) to the applicant, in reimbursement of the Tribunal application fee, by 5:00pm on 02 April 2025.**

## **The background and application**

1. The application concerns a RTM claim under Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act'). It relates to the Property, which is a purpose-built block containing 50 flats all let on long leases. The respondent is a RTM company and the members are leaseholders of some of the flats. The applicant is the freeholder of the Property.
2. The respondent originally gave a claim notice to the applicant, pursuant to section 79 of the 2002 Act, on 02 January 2024 ('the First Claim'). The applicant served a negative counter-notice on 06 February 2024, alleging the applicant had not established compliance with sections 78(1) and (3), 79(2) and (3) and 80(8) and (9).
3. The respondent then submitted a Tribunal application for a determination it was entitled to acquire RTM under section 84(3) of the 2002 Act ('the First Application').
4. The First Application was dismissed by an order of Deputy Regional Judge Carr dated 06 June 2024.
5. On 03 July 2024 the respondent gave a further claim notice to the respondent ('the Second Claim'). The applicant served a negative counter-notice on 07 August 2024, alleging the applicant had not established compliance with sections 78(1), (2), (3) and (5) and 79(2) and (3) of the 2002 Act.
6. The respondent then submitted a further section 84(3) application ('the Second Application'), which is the subject of a separate decision of today's date under case reference LON/00BG/LRM/2024/0605.
7. This case concerns the costs of the First Claim and the First Application. The applicant seeks a determination of these costs

pursuant to section 88(4) of the 2002 Act. Directions were issued on 14 November 2024, and the case was allocated to the paper track. Neither party has objected to this allocation of requested a hearing. The paper determination took place on 19 March 2025.

8. The relevant legal provisions are set out in the appendix to this decision.

### **The parties' submissions**

9. The Tribunal was supplied with a 341-page digital bundle in accordance with the directions. This included copies of the application and directions, the claim notice and counter-notice, the parties' statements of case and relevant correspondence and documents.
10. Details of the applicant's costs are set out in its statement of case and supporting bundle dated 30 January 2025. The bundle includes statements of costs and copy invoices together with copies of various costs decisions from the First-tier and Upper Tribunals. The total sum claimed is £4,818.51, which is broken down as follows:
  - Legal costs and disbursements relating to the claim notice - £2,722.71 (including VAT)
  - Management fee relating to the claim notice - £450 (including VAT)
  - Legal costs for the First Application - £1,645.80 (including VAT)
11. The statements of costs show the legal work was undertaken by Ms Lorraine Scott (grade A fee earner) at £325 per hour and Mr Matthew Harkes (grade D) at £195 per hour.
12. The respondent relies on a statement of case dated 01 February 2025. They dispute various elements of the costs claim and propose an alternative figure of £396 (including VAT). Their arguments can be summarised as follows:
  - (a) The disbursements relating to service of the counter-notice (courier's fee of £119.76 and Royal Mail special delivery charge of £7.35) should be disallowed in full, as a letter from the applicant's representative, accompanying the claim notice, explained their offices are not manned and their email address should be used for delivery of the counter-notice.
  - (b) The time spent perusing the claim notice is excessive and all this work should have been undertaken by Mr Harkes at £195 per hour.
  - (c) The time spent for perusing supporting documents is excessive and all this work should have been undertaken at £195 per hour.

- (d) The time spent preparing the counter-notice is excessive, as it would be based on a template. Again, this should have been undertaken at £195 per hour
  - (e) Mr Harkes' time spent on letters out/emails to others (0.8 hours) should be disallowed, given the other time claimed for correspondence. The statement of case suggests this work was undertaken on 07 August 2029, which is clearly an error.
13. The applicant replied to these arguments in a further statement of case dated 20 February 2025. In brief it contends:
- (a) The service disbursements are recoverable as regulations provide for a postal address of the counter-notice and it is unaware of any authority for service by email. A courier was used as the counter-notice could not be served by special delivery.
  - (b) The grade A fee earner's time was limited and the use of two fee earners is reasonable.
  - (c) The disputed time is all reasonable.

### **Discussion and findings**

14. The costs relating to the claim notice are payable under section 88(1) of the 2002 Act. They are to be assessed on a summary basis, and I have adopted a broadbrush approach.
15. The respondent has not challenged the fee earner's hourly rates (£325/195 per hour), which are allowed in full.
16. The respondent has not challenged the Land Registry fees of £6, which are allowed.
17. It was reasonable to attempt service of the counter-notice by special delivery, given the importance of this document and consequences if not served in time. The Royal Mail charge of £7.35 is allowed in full.
18. It was also reasonable to serve the counter-notice by courier, once the special delivery had failed. However, based on my experience as a Tribunal Judge and a solicitor in private practice, the courier's charge is on the high side. I allow £60, representing £50 plus VAT.
19. It was reasonable to use two fee earners on the basis most work was undertaken by the grade D fee earner under the grade A's supervision. The total time claimed is 3.4 hours (grade A) and 5.4 hours (grade D). The grade A time is on the high side, and I reduce this to 2 hours. The grade D time is allowed in full.

20. The respondent has not challenged the management fee of £450, which is allowed in full.
21. The section 88(1) costs payable by the respondent total £2,566.95, broken down as follows:
- Legal costs - £2,043.60 (£1,703 plus VAT)
  - Royal Mail - £7.35
  - Land Registry fees - £6
  - Courier's charges - £60 (£50 plus VAT)
  - Management fee - £450 (£375 plus VAT)
22. The costs relating to the First Application are payable under section 88(3) as that application was dismissed by the Tribunal on 06 June 2024. These costs have not been challenged by the respondent, and I allow the sum claimed (£1,645.80) in full.
23. The total costs payable by the respondent are £4,212.75 (£2,566.95 plus £1,645.80), which is approximately 87% of the sum claimed (£4,818.75). Given this outcome, I order reimbursement of the Tribunal application fee, pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules. The respondent must reimburse the £110 fee within 14 days of the date of this decision.

**Name:** Tribunal Judge Donegan      **Date:** 19 March 2025

## **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).

## **Commonhold and Leasehold Reform Act 2002**

### **Section 79 Notice of claim to acquire right**

- (1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a “claim notice”); and in this Chapter the “relevant date”, in relation to any claim to acquire the right to manage, means the date on which the notice is given.
- (2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.
- (3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).
- (4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.
- (5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.
- (6) The claim notice must be given to each person who on the relevant date is –
  - (a) landlord under a lease of the whole or any part of the premises,
  - (b) party to such a lease otherwise than as landlord or tenant, or
  - (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (referred to in this Part as “the 1987 Act”) to act in relation to the premises or any premises containing or contained in the premises.
- (7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.
- (8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.
- (9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the tribunal or court by which he was appointed.

### **Section 84 Counter-notices**

- (1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this chapter as a “counter-notice”) to the company no later than the date specified in the claim notice under section 80(6).

- (2) A counter-notice is a notice containing a statement either –
- (a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or
  - (b) alleging that, by reason of specified provisions of this Chapter, the RTM company was on that date not so entitled,
- and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.
- (3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to the appropriate tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.
- (4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.
- (5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless –
- (a) on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or
  - (b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.
- (6) If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.
- (7) A determination on an application under subsection (3) becomes final –
- (a) if not appealed against, at the end of the period for bringing an appeal, or
  - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.
- (8) An appeal is disposed of –
- (a) if it is determined and the period for bringing any further appeal has ended, or
  - (b) if it is abandoned or otherwise ceases to have effect.



## **Section 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 a landlord or tenant, or
  - (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 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 a 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 any amount of any costs payable by a RTM company shall, in default of agreement, be determined by the appropriate tribunal.