



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

Case Reference : **LON/00AG/LRM/2024/0600
LON/00AG/LCP/2025/0601**

Property : **6 Kidderpore Avenue, London NW3 7SP**

Applicant : **6 & 6A Kidderpore Avenue RTM Co Ltd**

Representative : **RTMF Services Ltd**

Respondent : **6 Kidderpore Avenue Ltd**

Representative : **Winckworth Sherwood LLP**

Type of Application : **To determine the amount of any
accrued uncommitted service charges to
be paid and for costs**

Tribunal : **Judge Nicol
Mr S Mason FRICS**

**Date and venue of
Hearing** : **13th June 2025
10 Alfred Place, London WC1E 7LR**

Date of Decision : **16th June 2025**

DECISION

- 1) There are no accrued uncommitted service charges to be paid by the Respondent to the Applicant in accordance with section 94 of the Commonhold and Leasehold Reform Act 2002.
- 2) The Applicant shall pay to the Respondent £1,638 plus VAT (total: £1,965.60) in accordance with section 88 of the Commonhold and Leasehold Reform Act 2002.
- 3) The Respondent shall reimburse the Applicant their Tribunal fees totalling £330.

- 4) The Respondent's application dated 9th June 2025 for a wasted costs order is adjourned part-heard to **6th October 2025** on the following directions:
- (a) The Applicant and RTMF Services Ltd shall, by **11th July 2025** email to the Respondent their statement of case in reply to the application, together with any further documents on which they wish to rely.
 - (b) The Respondent may, by **25th July 2025**, email any reply to the Applicant's statement of case, together with any further documents on which they wish to rely, including any updated statement of costs.
 - (c) The Respondent must, by **22nd August 2025**, send to the Tribunal at London.Rap@justice.gov.uk and to the Applicant by email a supplementary PDF bundle containing all documents relevant to the application not already in the bundle already provided for the hearing on 13th June 2025. The bundle must be indexed, have numbered pages and, so far as possible, be in chronological order.
 - (d) Applications for further directions, interim orders, variations of existing directions, or a postponement of the final hearing must be made using form Order 1¹.
 - (e) If the Respondent fails to comply with these directions the Tribunal may strike out all or part of the application pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").
 - (f) If the Applicant fails to comply with these directions the Tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules.

Relevant legislation is set out in an Appendix to this decision.

The Tribunal's reasons

1. 6 Kidderpore Avenue is a large 3-storey detached property containing a number of flats. The Respondent owns the freehold.
2. The Applicant acquired the right to manage the property under the Commonhold and Leasehold Reform Act 2002 ("the Act") on 27th June 2024.
3. The parties have made 3 applications relating to the right to manage:
 - (a) On 9th September 2024 the Applicant applied for a determination of the amount of accrued uncommitted service charges yet to be paid by the Respondent in accordance with section 94 of the Act.

¹ Form Order 1 is available at <https://www.gov.uk/government/publications/ask-the-first-tier-tribunal-property-chamber-for-case-management-or-other-interim-orders>

- (b) On 17th February 2025 the Respondent applied for a determination of the costs payable by the Applicant in accordance with section 88 of the Act.
- (c) On 9th June 2025 the Respondent applied for a wasted costs order under the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Rules”).
4. The applications were heard together on 13th June 2025. The attendees were:
- Mr Dudley Joiner of RTMF Services Ltd, representing the Applicant
 - Mr Jackson Sirica, counsel for the Respondent
 - Ms Zahrah Nadeem of Winckworth Sherwood LLP, the Respondent’s solicitors
 - Mr Adrian Phillips
 - Ms Susy Phillips
5. The documents before the Tribunal consisted of:
- A combined hearing bundle of 229 pages prepared by the Respondent;
 - The Respondent’s costs application with a number of separate supporting documents; and
 - A bundle of authorities from Mr Sirica.

Accrued service charges

6. Under section 94(1) of the 2002 Act, the Respondent must make to the Applicant a payment equal to the amount of any accrued uncommitted service charges held by them on the date of acquisition of the right to manage. This amount was not apparent because the Respondent had failed to produce service charge accounts for the most recent three years.
7. When the Applicant very properly sought those accounts in order to identify the correct amount, the Respondent and their solicitors responded as if they had been accused of serious criminal conduct. Rather than actually produce the accounts, they sought meetings between the parties but it is difficult to see what could have been achieved without the most basic and essential information.
8. In its directions issued on 16th January 2025, the Tribunal ordered the service charge accounts for the past three years to be provided by 6th March 2025. In the event, they arrived less than two weeks before the hearing. No extension of time was sought. The only explanation proffered was that the Respondent’s members, Mr Phillips and Ms Phillips, were acting without legal representation but the Tribunal does not understand how this is relevant. They were well-aware of their obligation to produce accounts, having done so in years past and being required to do so under the Tribunal’s directions order.
9. Mr Sirica submitted that just under two weeks had been sufficient time for the Applicant to consider the accounts but that is not true. The one

remaining dispute could have been sorted out some time ago if the Respondent had produced the accounts promptly. Further, this submission misses the point that the delay was a waste of everyone's time, involving unnecessary disputes and correspondence and stoking suspicion and mistrust.

10. The one remaining dispute involves the buildings insurance. The period covered by the insurance (July-July) did not match that of the accounts (April-March) and so the accountant had apportioned each year's premium, with part allocated to one service charge year and the rest to another year. This resulted in a sum of £2,832.38, the remaining part of the premium paid in the final year to 31st March 2024, not being included in the accounts. Therefore, it had to be offset against the positive balance of £2,176.38 which the accountants had otherwise found to exist, leaving nothing payable to the Applicant.
11. Perhaps understandably, Mr Joiner looked for other parts of the accounts where he said that this sum was or should be accounted for, e.g. in the provision for "Prepayments". It would have been useful for the Respondent to have produced at least a statement from the accountant, if not having him attend for cross-examination, explaining the apparent discrepancy. Instead, both Mr Joiner and the Tribunal had to do their best with what the Respondent had provided.
12. On the balance of probabilities, the Tribunal accepts the Respondent's explanation of the figures (paragraph 10 above). Therefore, there are no accrued uncommitted service charges to be paid by the Respondent to the Applicant in accordance with section 94 of the Act. However, the Respondent's actions have costs consequences (see paragraph 23 below).

Costs under section 88

13. Under section 88(1) of the 2002 Act, the Applicant is liable for reasonable costs incurred by the Respondent in consequence of a claim notice given by the Applicant in relation to the premises. The parties had agreed that the quantum of the Respondent's costs was £1,638 plus VAT (total: £1,965.60).
14. However, section 88 was repealed by section 50(4) of the Leasehold and Freehold Reform Act 2024, with effect from 3rd March 2025 under reg.2(b) of the Leasehold and Freehold Reform Act 2024 (Commencement No. 3) Regulations 2025. There are no transitional provisions. Mr Joiner argued that the Tribunal therefore had no power to award the costs.
15. Mr Sirica argued that the Respondent nevertheless remained entitled to the costs pursuant to section 88 and the Tribunal had the power to determine the issue. The Tribunal agrees for the following reasons.
16. Parliament has the power to enact legislation which acts retrospectively and Mr Joiner was arguing that that is what has happened here. He effectively conceded that the Respondent was entitled to their costs

under section 88 at the time they applied for them in February but argued that the repeal took that entitlement away.

17. However, the general presumption is that, unless the contrary intention appears, and except in relation to procedural matters, changes in the law should not take place retrospectively. As stated by the authors of *Bennion, Bailey and Norbury on Statutory Interpretation*, 6th edition [7.13]:

The essential idea of a legal system is that current law should govern current activities. If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it.

18. In *Wilson v First County Trust Limited (No. 2)* [2004] 1 AC 816 [19] Lord Nicholls endorsed the following principle advanced by Staughton LJ in *Secretary of State for Social Security v Tunncliffe* [1991] 2 All ER 712 at 724:-

The true principle is that Parliament is presumed not to have intended to alter the law applicable to past events and transactions in a manner which is unfair to those concerned in them, unless a contrary intention appears. It is not simply a question of classifying an enactment as retrospective or not retrospective. Rather it may well be a matter of degree – the greater the unfairness, the more it is to be expected that Parliament will make it clear if that is intended.

19. In the Tribunal's opinion, it would be unfair if the new statutory provisions were applied retrospectively. During the process of acquiring the right to manage, the parties would have proceeded on the understanding that the Respondent was entitled to its reasonable non-litigation costs in respect of the right to manage claim. The Commencement Regulations only came into force on 6th February 2025. There is no clear language that Parliament intended to remove the existing rights of those in the Respondent's position.
20. Mr Sirica also pointed to section 16(1) of the Interpretation Act which applies to all Acts of Parliament unless an enactment expressly states otherwise. There is no suggestion that the Leasehold and Freehold Reform Act 2024 made any such exclusion. Section 16(1) provides that, where an Act repeals an enactment, the repeal does not, unless the contrary intention appears,
 - (a) revive anything not in force or existing at the time at which the repeal takes effect;
 - (b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;
 - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment
 - (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that enactment;

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

21. The Tribunal is satisfied that, under section 16(1)(b), the Respondent's entitlement to costs incurred prior to the repeal of section 88 of the Act is unaffected by that repeal.

Reimbursement of fees

22. For the reasons given in paragraphs 6-9 above, the Tribunal is satisfied that it is appropriate that the Respondent should pay the Applicant's Tribunal fees of £330.

Wasted costs application

23. The Applicant served their statement of case late. In seeking to explain what had happened, RTMF produced an email purportedly dated "Tuesday 28 March 2025" purporting to send the statement of case to the Respondent but wrongly addressed to "nadeem@wslaw.co.uk" instead of "znadeem@wslaw.co.uk". The Respondent noted that 28th March 2025 had been a Friday, not a Tuesday, and made further investigations with their IT department which found that no such email had ever been acknowledged on their server records and the metadata for the attached pdf document indicated it had only been created in April.
24. On the basis of this information, the Respondent argued that RTMF had made up an email in seeking to explain and possibly excuse their non-compliance with the Tribunal's directions. They applied for RTMF or, alternatively, the Applicant, to pay the costs they had wasted on their investigation under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
25. If the Respondent's allegation is true, the matter is extremely serious, contrary to the implication in Mr Joiner's witness statement dated 11th June 2025. The situation is not dissimilar to the circumstances the court recently condemned in clear language in *R (Ayinde) v Haringey LBC* [2025] EWHC 1040 (Admin).
26. In the circumstances, the Tribunal was not comfortable requiring Mr Joiner to answer the application at such short notice and without an opportunity to take legal advice and advice from someone who could explain to him the workings of email servers and document metadata. When the Tribunal said this to Mr Joiner, he nevertheless wanted to continue but rather reinforced the Tribunal's point by submitting that it would be normal to recreate a pdf copy of a Word document each time it was sent by email.

27. The Tribunal is not satisfied that Mr Joiner understands the case against RMTF, both in law and in relation to the evidence, or how serious it is. It would not be fair or in accordance with the proper administration of justice to require him to answer the application without the opportunity to seek suitable advice. Therefore, the application is adjourned on the directions set out above.
28. Mr Joiner asked for a direction as to expert evidence but it is not clear at this stage whether he needs or wants it. If RMTF or the Applicant later decide that they do want to rely on expert evidence, they may apply for permission to do so, supported by full reasoning.

Name: Judge Nicol

Date: 16th June 2025

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

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 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.

Section 94 **Duty to pay accrued uncommitted service charges**

- (1) Where the right to manage premises is to be acquired by a RTM company, a person who 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 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,
- must make to the company a payment equal to the amount of any accrued uncommitted service charges held by him on the acquisition date.
- (2) The amount of any accrued uncommitted service charges is the aggregate of—
- (a) any sums which have been paid to the person by way of service charges in respect of the premises, and
 - (b) any investments which represent such sums (and any income which has accrued on them),
- less so much (if any) of that amount as is required to meet the costs incurred before the acquisition date in connection with the matters for which the service charges were payable.
- (3) He or the RTM company may make an application to the appropriate tribunal to determine the amount of any payment which falls to be made under this section.
- (4) The duty imposed by this section must be complied with on the acquisition date or as soon after that date as is reasonably practicable.