



**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 : Wasted costs

Tribunal : Judge Nicol
Mr S Mason FRICS

**Date and venue of
Hearing** : 6th October 2025
10 Alfred Place, London WC1E 7LR

Date of Decision : 9th October 2025

DECISION ON COSTS

- 1) RTMF Services Ltd shall pay to the Respondent wasted costs summarily assessed in the sum of £9,000, inclusive of VAT.
- 2) The Respondent's application for costs against the Applicant is dismissed.

The Tribunal's reasons

1. The Applicant acquired the right to manage 6 & 6A Kidderpore Avenue under the Commonhold and Leasehold Reform Act 2002 (“the Act”) on 27th June 2024. On 16th June 2025, the Tribunal decided that there are no accrued uncommitted service charges to be paid by the Respondent to the Applicant in accordance with section 94 of the Act and that the Applicant must pay to the Respondent £1,965.60 in accordance with section 88 of the Act. The Tribunal also ordered the Respondent to reimburse the Applicant their Tribunal fees due to the Respondent’s misconduct in delaying the production of accounts.
2. However, left outstanding was the Respondent’s application dated 9th June 2025 for a wasted costs order against both RTMF Services Ltd (“RTMF”) and the Applicant, for which directions were made.
3. RTMF applied for an extension of time to serve their statement of case. On 17th July 2025 the Tribunal refused to extend time due to various deficiencies in the application but stated that the application may be renewed without the deficiencies. It has not been renewed. However, RTMF did provide a second witness statement dated 17th September 2025 from Mr Joiner, the case officer at RTMF, now included in the updated supplementary bundle.
4. The Applicant did not respond separately to the application despite its being against them as well as RTMF.
5. The application was heard on 6th October 2025. The relevant documents were contained in a 63-page supplementary bundle from the Respondent, updated to 95 pages shortly before the hearing. The attendees were:
 - Mr Swirsky, counsel for RTMF
 - Mr Dudley Joiner of RTMF
 - Mr Peter Sibley, counsel for the Respondent
 - Ms Zahrah Nadeem of Winckworth Sherwood LLP
 - Mr Adrian Phillips
 - Ms Susy Phillips
6. The relevant facts were as follows. The Applicant did not serve their statement of case on the substantive application by 27th March 2025 as required by the Tribunal’s directions of 16th January 2025. In an email dated 11th April 2025 RTMF stated, “it was sent on 28th March.” Mr Phillips replied on behalf of the Respondent on 13th April 2025 that neither they nor their solicitors, Winckworth Sherwood, had received the Applicant’s statement of case. RTMF emailed a copy of the statement of case on 14th April 2025, 2½ weeks late.
7. By email dated 15th April 2025 Winckworth Sherwood asked for “a copy of your email (or emails) of 28 March 2025 attempting service of the Statement in Reply.” Later the same day, RTMF sent what purported to

be the email in question. However, it purported to be dated “Tuesday, 28 March 2025” whereas 28th March 2025 was a Friday.

8. Winckworth Sherwood investigated further and found the following:
 - (a) The email in question was addressed to “nadeem@wslaw.co.uk” whereas the correct email address for the principal caseworker on this matter at Winckworth Sherwood was “znadeem@wslaw.co.uk”. RTMF later suggested this as a reason why the email had not been received but Winckworth Sherwood’s IT records showed 3 other emails from RTMF similarly wrongly addressed, with the right domain name but the wrong recipient name, had been bounced back. If the email in question had actually been sent, it too would have showed up on the IT records but it did not.
 - (b) The metadata on the pdf document containing the Applicant’s statement of case showed that the pdf had been created for the first time on 11th April 2025 and so couldn’t have been sent with the email in question if it had been sent on 28th March 2025. In his second witness statement, Mr Joiner produced evidence to show he had started work on his client’s statement of case by creating a Word document on 22nd March 2025 but that is to miss the point. RTMF claimed to have sent an email with a pdf document attached so it is the date of creation of the pdf document, not the original Word document, which is relevant.
9. In both his witness statements, Mr Joiner attempted both to excuse and downplay what had happened. The Tribunal hearing on 6th October 2025 started late partly to give Mr Joiner additional time with RTMF’s counsel, Mr Swirsky. At the start of the hearing, Mr Swirsky outlined a new position for RTMF which had not been expressed previously. He said it was accepted that, contrary to what RTMF’s emails stated, no email had actually been sent on 28th March 2025. Mr Joiner says that, when asked for the email, he had “re-created” one from that date which no longer existed because it had been deleted for unrelated reasons.
10. Mr Sibley retorted that the Respondent’s case was that the email had been created from scratch, not “re-created” from an existing document, and that the difference was significant. However, Mr Swirsky made it clear that RTMF was now accepting liability for costs and the only dispute was in relation to quantum. As discussed below, the costs claimed in this case have been wholly disproportionate and, in the Tribunal’s opinion, it would have been equally disproportionate to conduct a lengthy evidential examination of precisely what RTMF did.
11. To make it clear, whether there was a pre-existing email or not, RTMF claimed to have sent an email which it knew it had not, purporting to cut down its period of default from 2½ weeks to one day, and then created a document which did not exist to try to back up this erroneous claim. Further, Mr Joiner’s efforts to excuse or downplay what had been done added another layer of misconduct.

12. Whatever the motive, this is reprehensible behaviour. RTMF must have known they shouldn't have done it. The authenticity of documentary evidence is vital to ensuring legal claims are determined correctly and the Tribunal cannot allow that to be undermined, even when the document relates to a procedural rather than a substantive issue.
13. The sanction which the Respondent seeks is an order for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013:
 - (1) ... the Tribunal may make an order in respect of costs only—
 - (a) under section 29(4) of the [Tribunals, Courts and Enforcement Act 2007] (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings; ...
14. Under section 29(5) of the 2007 Act, "wasted costs" means any costs incurred by a party—
 - (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or
 - (b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.
15. In *Ridehalgh v Horsefield* [1994] Ch 205, the Court of Appeal considered in detail the wasted costs jurisdiction. They held that the words "improper, unreasonable or negligent" bore their established meaning:
 - "improper" applied to conduct which amounted to any significant breach of a substantial duty imposed by a relevant code of professional conduct and included conduct so regarded by the consensus of professional opinion;
 - "unreasonable" described conduct which is vexatious or did not permit of a reasonable explanation;
 - "negligent" was to be understood in an untechnical way to denote a failure to act with the competence reasonably to be expected of ordinary members of the profession.
16. The court agreed with the three-stage test applied in *In re A Barrister (Wasted Costs Order) (No. 1 of 1991)* [1993] QB 293:
 - (a) Had the legal representative of whom complaint was made acted improperly, unreasonably or negligently?
 - (b) If so, did such conduct cause the applicant to incur unnecessary costs?
 - (c) If so, was it, in all the circumstances, just to order the legal representative to compensate the applicant for the whole or part of the relevant costs?

17. The Tribunal has no doubt that the conduct of RTMF in relation to the supposed email of 28th March 2025 was improper and unreasonable. That did not cause the Respondent to incur costs in relation to the substantive application or hearing because, as already determined in the Tribunal's decision of 16th June 2025, it was the Respondent's own conduct which required the Applicant to bring the substantive application and take it through to the final hearing on 13th June 2025. Rather, it caused the Respondent to incur costs investigating what had happened and then to make the current application for those costs to be paid. Further, RTMF resisted the application right up to the start of the hearing on 6th October 2025, thereby causing further costs to be incurred.
18. In the circumstances, the Tribunal is satisfied that it is just to order RTMF to compensate the Respondent for the relevant costs they incurred. Mr Swirsky, on behalf of RTMF, conceded this but sought to challenge the quantum of costs claimed by the Respondent.
19. The Respondent's claim for costs was set out in 3 Statements of Costs in county court form N260:
 - The first Statement, dated 9th June 2025, for a total of £3,249.60 was said to represent the costs of investigating what had happened.
 - The second Statement, dated 11th June 2025, for a total of £2,460, was said to represent the additional costs of making the application for costs.
 - The third Statement, dated 2nd October 2025, for a total of £19,482.48 was said to represent the further costs incurred between the hearings of 13th June and 6th October 2025.
20. Therefore, the total sought by the Respondent was £25,192.08.
21. Mr Swirsky had a number of criticisms of the calculation of costs. The Tribunal finds that the following criticisms are valid:
 - (a) The majority of work was carried out by a Grade C fee earner whose hourly rate was within the relevant guidelines for this part of London. There was an acceptable amount of supervision time from a Grade A earner but their time was charged at £425 or £365 per hour rather than the maximum £312.
 - (b) Attendances on the client amounted to 4.2 hours in the first Statement and 13.2 hours in the third. Of course, the solicitors would have had to explain what they were doing in order to ensure they were instructed to do it and, as for all aspects of this matter, the seriousness of the allegations required careful consideration but neither the facts nor the law were complicated. Mr and Ms Phillips had nothing personally to contribute to the application, not being privy to any of the relevant facts nor expert in any technical or legal aspect. These times cannot remotely be justified.
 - (c) Attendances on opponents were claimed at 1.5 hours in the first Statement for what amounted to a few short emails. Of course the emails would have been supported by time for consideration of the issues in the

case but that was claimed elsewhere. This is the first of a number of examples where it appears that the Respondent made no allowance for overlap, e.g. if it really took the solicitor over 4 hours to discuss matters with their client, that could not have involved anything other than an extremely thorough consideration of all issues which then would not need to be repeated when considering what to put in an email.

- (d) Attendances on others was claimed at 1.9 hours in the first Statement, 0.7 hours in the second and 12.5 hours in the third. Mr Swirsky was not sure what they were for. Mr Sibley explained that they were for attendances on the Tribunal and internal discussions at Winckworth Sherwood. The Tribunal has two comments. The first is that the Respondent's attendances on the Tribunal included trying first to put their costs application in the form of a letter (2.5 hours were separately charged for drafting it) and then, when the Tribunal pointed out that the application should have been in form Order 1, as the directions had already required, drafting and submitting the costs application itself. The Respondent cannot charge for putting their application in the wrong form. Also, they cannot charge the full amount of preparing both the letter and the application since they would have required virtually identical preparation.
- (e) Secondly, the third Statement implies that two members of staff at Winckworth Sherwood spent a total of about 6 hours discussing the case with each other (and then sought to charge separately for the time spent by each of them) *after* the investigations had been completed and the application submitted. The Tribunal finds it impossible to envisage what discussions useful to the progress of this matter could possibly have taken that amount of time, especially as most of the preparation had already been completed.
- (f) In the Schedule of work done on documents in the first Statement, 3 hours are claimed for "Email and metadata investigations". At first blush, this would seem reasonable but the Respondent specifically stated that the claim for costs did not include any of the work carried out by their IT department. Therefore, this was 3 hours spent by the Grade C fee earner alone. Clearly, she did some work on this issue – there is an internal email where she carefully sets out her understanding of the IT issues so that the IT department can confirm it. However, the Tribunal cannot understand how that could have taken her as much as 3 hours.
- (g) The Schedule also lists time spent drafting an application for an extension of time. There are two objections to this. Firstly, the need for an extension of time arose from the Applicant's late service of their statement of case and not from the circumstances giving rise to the wasted costs application. Secondly, the parties are able to agree such extensions between themselves and Mr Joiner offered to agree it. There was no need for a formal Tribunal application by the Respondent.
- (h) In the Schedule to the second Statement, 5.4 hours are claimed for the Grade C fee earner drafting the costs application and enclosures and 2.3 hours for a Grade B fee earner to check it. As already mentioned, it is understandable that Winckworth Sherwood would want to be careful making such serious allegations but that does not remotely justify having staff spend the equivalent of an entire working day on this one

application. This is an example, along with the timings referred to in sub-paragraph (e) above, of claims which are so high that they appear to refute, by themselves, Mr Sibley's claim that these were the hours actually spent. Costs can be reduced on the basis that, while a fee earner did spend a certain number of hours on a task, they should have taken less time, but these hours are so high that the Tribunal has serious doubts that the fee earners really did spend all that time on the claimed task in the first place.

- (i) In the third Statement, 3.8 hours are claimed for attendances on opponent. Mr Sibley sought to justify this by reference to an open settlement offer, which was included in the supplementary bundle, and without prejudice correspondence, which was not. However, a separate 6.78 hours is included in the Schedule of work done on documents for "Drafting without prejudice and open correspondence". That itself is an extortionate amount of time to draft such correspondence, particularly in the light of the extensive consideration allegedly already given to this matter. Of course, there would have been correspondence about the bundles for the hearing (see below) but, yet again, far more time is claimed than could possibly be justified.
- (j) The third Statement includes time for the solicitor's attendance at the costs hearing on 6th October 2025. The hearing only took 3 hours from its original start time to be completed, rather than the 6 claimed, but Mr Swirsky also criticised the need for the solicitor to attend at all in addition to counsel. However, the nature of this case is that counsel could reasonably have expected to find it useful, and possibly even essential, to be able to consult with the caseworker from his instructing solicitors and the Tribunal is satisfied that her attendance was appropriate. Having caused costs to arise, RTMF is not in a position to complain that the Respondent could have done things cheaper, so long as the costs remain within the bounds of reasonableness and proportionality.
- (k) Mr Sibley's brief fee was £4,500. The hearing was originally listed for one day and it only became apparent that it would shorten to half a day when Mr Swirsky opened with his concession on liability. Even taking that into account, this is an unjustifiably high fee. Mr Sibley's call is 2017. Although he came new to the case, he only had 95 pages to master in the relevant bundle and one witness to cross-examine in relation to very few factual issues. The degree of preparation required is reflected in the fact that Mr Sibley did not prepare a skeleton argument and did not provide or refer to any legal authorities. A reasonable fee would be no more than £2,000 plus VAT.
- (l) In the Schedule to the third Statement, 5.9 hours are claimed for preparing the original 63-page bundle, split between 3.9 hours for a Grade D fee earner and 2 hours for the Grade C fee earner. There is then an additional 2.3 hours, split 2.1 and 0.2, for adding 32 more pages. Again, this is extraordinary, literally incredible and in no way justifiable.
- (m) 3.5 hours are claimed for drafting instructions to counsel. Given that Mr Sibley was new to the case, it is understandable that the brief would be reasonably thorough. However, most of the relevant information would be in the 95-page bundle. This is still clearly too high.

- (n) The Schedule includes 2 hours each for “Calculating Wasted Costs figures” and “Preparing third Statement of Costs”. Apparently the former work was in support of the without prejudice and open settlement correspondence (in addition to the 6.78 hours already claimed for drafting it) but, even if that amount of time could be justified for that task, it should not then take a further 2 hours to prepare the Statement of Costs as if no work had been done on that to date.
22. RTMF deserve to be sanctioned for their misconduct, as already described above. However, this cannot justify the claims for hours spent in the Respondent’s Statements of Costs. The costs award is for the purposes of compensating the Respondent for time and costs wasted, not as a penalty against RTMF. When the Tribunal adjourned the application on 13th June 2025, it was to ensure that RTMF benefited from legal and, if necessary, expert advice. That was eventually obtained, resulting in Mr Swirsky’s helpful intervention, but, on the Respondent’s side, it resulted in a supposed quintupling of the costs when, in fact, most of the relevant work had already been done.
23. As the Tribunal mentioned during the hearing, it is difficult to understand why one of the more senior fee earners involved from time to time did not spot that the costs were getting out of all proportion to the issues involved and rein them in.
24. In most costs assessments, it would be appropriate to reduce any excessive claims for individual items on an individual basis. Apart from counsel’s fee, it can be seen from the list of matters in paragraph 21 above that the Tribunal has not done this. This is because the claims for hours spent are so extraordinary and over-the-top that the Tribunal cannot use them as any kind of baseline from which reductions may be made. The Respondent has left the Tribunal with little choice but to make its own summary or rough-and-ready approximation of what the total sum of reasonable and proportionate costs would be.
25. In the light of all the matters set out above, the Tribunal orders RTMF to pay to the Respondent the sum of £9,000 in respect of wasted costs, inclusive of counsel’s fee and VAT.
26. Mr Sibley submitted that the Applicant should be made jointly and severally liable for this sum but the Tribunal cannot see the justification. The Applicant itself is not guilty of any improper or unreasonable conduct and there is no evidence they had any idea RTMF could behave in the way they did, let alone that they had any involvement. Further, the Applicant includes amongst its members Mr and Ms Phillips who would be liable to pay their share of any liability of the Applicant. Mr Sibley asked that the Tribunal direct which of the Applicant’s shareholders would have to pay but the Tribunal has no such power.

Name: Judge Nicol

Date: 9th October 2025