FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/45UF/LCP/2025/0001
Property	:	Bishopric Court Horsham RH12 1TH ("the property")
Applicant	:	City and Country Properties Limited
Representative	:	Wallace LLP solicitors
Respondent	:	Bishopric Court (Horsham) RTM Company Limited (now known as BC COURT RTM COMPANY LIMITED)
Representative	:	LH Property Block Management Limited
Type of Application	:	Application in relation to costs under s.88(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")
Tribunal Member	:	Tribunal Judge H Lederman
Date of Decision	:	25 September 2025

DECISION AND REASONS

Communications to the Tribunal MUST be made by email to rpsouthern@justice.gov.uk. All communications must clearly state the Case Number and address of the premises.

DECISION

1. **The description of the Respondent (Company number 15697380) shall be amended to BC COURT RTM Company Limited pursuant to a change of name on 1st February 2025.**

2. **No costs are payable by the Respondent to the Applicant arising from a notice dated 1 August 2024 ("the claim notice") given under sections 79-80 of the 2002 Act relating to Right to Manage the property withdrawn on 5th September 2024.**

3. **The Tribunal declines to make any order against individual members of the Respondent in respect of withdrawal of the claim notice.**

REASONS

Background

1. The Tribunal received an application under section 88(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") dated 15th January 2025 for a decision as to the costs payable by the Respondent RTM company in relation to a withdrawn application for the Right to Manage the Property. The Applicant is the freeholder of the Property

2. By a claim notice dated 1 August 2024, the Respondent gave notice that it intended to acquire the Right to Manage the Property on 15 November 2024 ("the claim notice") [47-53].

3. By an email dated 5 September 2024 [60], the Respondent's representative LP Property Block Management Limited ("LP") confirmed that the application to acquire the Right to Manage the Property was withdrawn.

4. By an email dated 16 September 2024 [86], the Applicant's representative confirmed that the costs incurred by the Applicant in relation to the Respondent's application amounted to £3,247.20 (comprising legal fees of £1,950 plus VAT and Land Registry fees of £756 plus VAT).

5. In these reasons reference to the Applicant includes where the context requires the Applicant's solicitors Wallace LLP.

Procedure and documents available

6. The Tribunal issued directions on 29th April 2025 which required the filing of a bundle. A initial bundle was filed by the Applicant comprising

105 pages. References to page numbers in [ ] are to that hearing Bundle, unless stated otherwise.

7. In those Directions the Tribunal indicated as follows:

6.1 the Tribunal was to determine the application on the papers without a hearing subject to any representations of either party.

6.2 the parties had not considered the repeal of sections 88 and 89 of the 2002 Act by section 50(4) Leasehold and Freehold Reform Act 2024 ("the 2024 Act")) and replaced by sections 87A and 87B, of the 2024 Act those provisions coming into force on 3rd March 2025 without transitional provisions and the parties were invited to provide representations

6.3 The Applicant provided written submissions dated 24th July 2025 and helpfully annexed copies of authorities including excerpts Bennion on Statutory Interpretation.

6.4 On 12th September 2025 the Tribunal issued further directions inviting the parties to give comments upon the decision in *Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point* [2025] EWCA Civ 856 within 7 days. Further submissions were received from the Applicant's solicitors on 15th September 2025 and in emails from LP on behalf of the Respondent on 12th and 15th September 2025.

Parties to this application

8. Neither party has made any attempt to join the members of the Respondent to these proceedings. The Applicant invites the Tribunal to determine the costs on the basis that the members of the Respondent may have a joint and several personal liability for payment of such costs.

9. The Applicant's submissions assert the Respondent is subject to a proposal to strike off that company from the register of companies recorded in a "First gazette notice" dated 15th July 2025. Paragraph 11 of the Applicant's submissions argues the proposed dissolution of the Respondent is a reason why any order should be made against the members of the Respondent. In the absence of any joinder of those individual members of the Respondent to these proceedings, it would not be appropriate or just to make an order which affects those individuals, assuming the Tribunal has the power to do so.

Relevant protagonists

10. The solicitor with conduct of the application on behalf of the Applicant, Fleur Neale, is described as a legal director in the leasehold enfranchisement department of Wallace LLP a (central) London firm of

solicitors with expertise and experience of a grade A fee earner for charging purposes – see paragraphs 20-21 of their submissions [43].

11. The sole director of the Respondent appears to be Peter Corbin of LP who has conducted all correspondence on behalf of the Respondent. It does not appear that Peter Corbin or LP are legal representatives or have any legal qualifications, but are property management professionals.

12. The Tribunal is satisfied that it is in the interests of justice and consistent with the overriding objective in Rule 3 of the 2013 Tribunal Procedure rules to determine this application without a hearing, given the absence of any objection pursuant to rule 31 (3) of those Rules.

Other background

13. The Respondent's email from Peter Corbin of 19 June 2025 at [104], and the document at page [100] confirms the Respondent (Company number 15697380) had changed its name to BC COURT RTM Company Limited on 19th February 2025.

Jurisdiction to award costs to the Applicant

14. Sections 88 and 89 of the 2002 Act were repealed by section 50(4) of the 2024 Act and replaced by sections 87A and 87B of the 2024 Act. The new provisions came into force on 3 March 2025, without any saving or transitional provisions, by way of the Leasehold and Freehold Reform Act 2024 (Commencement No. 3) Regulations 2025 (SI 2025/131)) ("the 2025 Regulations").

15. Prior to 3 March 2025, the general position was that an RTM company was liable for the reasonable non-litigation costs incurred by a landlord in consequence of an RTM claim up to the point of withdrawal (or deemed withdrawal) of the claim notice. Following the repeal of sections 88 and 89 of the 2002 Act, the new position is that there is no such liability on the RTM Company except where a Tribunal makes an order for costs under section 87B of the 2024 Act.

16. Under section 87B(1)of the 2024 Act, the Tribunal "may" grant an application for an order that an RTM company is liable for costs, but only if *all* of the conditions in subsection 87B(2) are met, the relevant parts of which are:

" (a) the claim notice -
  (i) is at any time withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
  (ii) at any time ceases to have effect by reason of any other provision of this Chapter;

(b) the RTM company acts unreasonably in-

(i) giving the claim notice, or
(ii) not withdrawing it, causing it to be deemed withdrawn, or causing it to cease to have effect sooner;

(c) the applicant is-
(i) a landlord under a lease of the whole or any part of the premises,
……………………

(d) the costs are incurred before the claim notice is withdrawn, is deemed withdrawn, or ceases to have effect;

(e) the costs are incurred other than in connection with proceedings before a court or tribunal;

(f) the costs are reasonably incurred.

Issue no 1: Do the provisions of section 87B of the 2024 Act apply to the costs which are the subject of this application?

17. The 2025 Regulations make no provision for the date when section 87B of the 2024 Act is to take effect.

18. Sections 122 and 122(4) of the 2024 Act empower the Secretary of State to make transitional or saving provisions in connection with the coming into force of parts of the 2024 Act. No transitional or saving regulations have been made.

19. The 2024 Act was given Royal Assent on 24 May 2024.

20. In the absence of express transitional provision, the Tribunal is required to draw such inferences as to the intended transitional arrangements as it can, in the light of the interpretative criteria: Bennion Bailey and Norbury on Statutory Interpretation ("Bennion"): paragraph 7.10(3) and *R v C* [2008] 1 WLR 966 at paragraphs 27-28.

21. It is sometimes said it is a principle of legal policy that, except in relation to procedural matters, changes in the law should not take effect retrospectively and that legislation is retrospective if it alters the legal consequences of things that happened before it came into force - Bennion paragraph 7.13.

22. That textbook qualifies that general rules as follows. Although it is often convenient to describe legislation as retrospective or not retrospective, retrospectivity is better viewed as a question of degree which will vary according to the context. The degree of retrospectivity is one of the relevant factors when considering whether the general presumption against retrospectivity is rebutted (as discussed further in Bennion at paragraph 7.14).

23. Paragraph 7.14 of Bennion provides

> (1) Unless the contrary intention appears, an enactment is presumed not to be intended to have a retrospective operation.
> (2) The strength of the presumption varies from case to case, depending on the degree of unfairness that would result from giving the enactment retrospective effect.
> (3) The greater the unfairness the clearer the language required to rebut the presumption.

24. The presumption against "retrospectivity" was recently considered in the context of the Building Safety Act 2022 by the Court of Appeal in *Triathlon Homes LLP v Stratford Village Development Partnership* [2025] EWCA Civ 846. and *Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point* [2025] EWCA Civ 856 and paragraphs 53-72 and 86 ("*Adriatic Land")*.

25. The Applicant also relies upon the parts of section 16 of the Interpretation Act 1978 ("the 1978 Act") italicised below.

> "General savings.
> (1)Without prejudice to section 15, 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."

26. Ultimately the issue before this Tribunal is one of one of statutory construction: what is the legal effect of the words used by Parliament in the statute under consideration? The presumption against retrospectivity is a tool which assists the Tribunal to arrive at the right construction. It is "not some sort of substantive or even procedural legal

right"; it is "a rule of construction, or, perhaps more accurately, a factor to be taken [i]nto account when interpreting a statute or rule": see *Adriatic Land* at paragraphs 135-144.

27. The Applicant says there are no provisions in the 2024 Act which express an intention that sections 87A and 87B of the 2024 Act should affect costs incurred before that Act came into force. The Applicant refers to the absence of any transitional provisions in the Regulations or in the 2024 Act: paragraph 6 of the Applicant's submissions of 24 July 2025.

28. The 1978 Act was not considered in *Adriatic Land*. It is clear from decisions such as *Lipton v BA Cityflyer Ltd* [2025] A.C. 154 however, that the provisions of section 16 ultimately produce the same question as that set out earlier in these reasons. That is: how the repealing Act is to be interpreted. Express words of contrary intention are not necessarily required in the repealing Act.

29. Explanatory notes during the passage of the Bill leading to the 2024 Act may be of some assistance in shedding light upon what Parliament intended: " see *Adriatic Land* at paragraphs 65-71.

30. The pre-amble to the 2024 Act in its relevant parts reads "An Act ..., *to amend* the rights of tenants under long residential leases to acquire the freeholds of their houses, to extend the leases of their houses or flats, and to collectively enfranchise *or manage the buildings containing their flats,..*" (emphasis added)

31. Paragraph 28 of the Explanatory Notes to the 2024 Act provides:

> "The [2024] Act sets a new costs regime for enfranchisement and right to manage claims. Leaseholders who are ......exercising their right to manage will no longer generally pay the landlord's costs of dealing with the claim (such as valuation, conveyancing and legal fees). Each party will generally bear their own costs."

32. Paragraphs 269-271 of the Explanatory Notes provide:

> "Section 50: Costs of right to manage claims
>
> 269. Section 50 replaces the existing costs regimes for RTM claims under the CLRA 2002. The new regime is contained in new Sections 87A and 87B. The Section also amends the CLRA 2002 to ensure a person complying with a duty to provide information under Section 82 cannot withhold supplying a copy of a document to an RTM company until they receive a reasonable fee. The RTM company is liable for the reasonable costs of a person complying with their duty under Section 82.
>
> 270. New Section 87A sets out the general rule that RTM companies and RTM company members are not liable for the costs incurred by another person because of an RTM claim. It contains a provision that prevents arrangements to the

contrary or the recovery of costs by other means. However, new Section 87A does not affect agreements to pay or contribute to costs made between RTM company members, and between RTM company members with an RTM company.

271. New Section 87B allows the tribunal to order a RTM company to pay the reasonable costs of specified people that arise from an RTM claim being made. An order can only be made if the claim notice is withdrawn or ceases to have effect and the RTM company has acted unreasonably. Where an order is made, members of the RTM company are jointly and severally liable and former members may also be liable in specified circumstances."

33. In all material respects these are identical to the Explanatory Notes to the Bill as it was in February 2024 viz:

> "Clause 48: Costs of right to manage claims
>
> 261 Clause 48 replaces the existing costs regimes for RTM claims under the CLRA 2002. The new regime is established in new sections 87A and 87B. The clause also amends the CLRA 2002 to ensure a person complying with a duty to provide information under section 82 cannot withhold supplying a copy of a document to an RTM company until they receive a reasonable fee. The RTM company will be liable for the reasonable costs of a person complying with their duty under section 82.
>
> 262 New section 87A sets out the general rule that RTM companies and RTM company members are not liable for the costs incurred by another person because of an RTM claim. It contains a provision that prevents arrangements to the contrary or the recovery of costs by other means. However, new section 87A also sets out the costs liability between RTM company members, and between RTM company members with an RTM company.
>
> 263 New section 87B allows the tribunal to order an RTM company to pay the reasonable costs of specified people that arise from an RTM claim being made. An order can only be made if the claim notice is withdrawn or ceases to have effect and the RTM company has acted unreasonably. Where an order is made, members and former members of the RTM company may be jointly and severally liable."

> "Clause 122: Commencement
>
> 690 Clause 122(1) specifies the parts of the Bill which come into force on the day on which the Act is passed.
>
> 691 Clause 122(2) lists provisions which will commence two months after Royal Assent.

Clause 122(3) provides that other provisions of the Act come into force on the day that this Act is passed.
692 Clause 122(4) gives a power to make regulations which include transitional or saving provision in connection with the coming into force of any provision of the Act. Clause 122(5) confirms that the power to make regulations under this section includes power to make different provision for different purposes. Clause 122(6) is self-explanatory."

Competing interpretations

34. The Applicant argues that to apply the provisions of sections 87A and 87B of the 2002 Act before the coming into force of the 2024 Act would be to affect the previous operation of the 2002 Act, or affect the Applicant's right or the Respondent's liability to such costs accrued under the 2002 Act, or a remedy in respect of such right or liability. This contention, if correct, might mean that all claim notices served before 3rd March 2025 would be subject to the former costs regime under sections 88 - 89 of the 2002 Act, whenever the claim for costs is made by the landlord or other entity. Alternatively, it could mean that the repeal of the words in section 89(1)(a) of the 2002 Act "at any time" mean that where a claim notice is withdrawn after 3rd March 2025, the new costs regime in sections 87A- 87B of the 2024 Act applies.

35. In Wallace LLP's letter of 15th September 2025 the Applicant argues there is nothing in the 2024 Act which expresses a contrary intention that the rights to claim costs under section 87-88 of the 2002 Act or the corresponding "liability" of the Respondent and its members to pay such costs under the former version of the 2002 Act should be affected. This is accurate in terms of the express terms of the Act. This argument does not address whether the absence of any transitional provisions preserving pre-existing liability was intended to mean that the costs regime in section 88 – 89 of the 2002 Act would no longer apply from the date that the 2024 Act came into force to all claims to costs, whether or not the costs were incurred before or after 3rd March 2025.

36. Section 124(4) of the 2024 Act empowered the Secretary of State to make saving or transitional provisions. A saving provision might have been expected to preserve the "liability" of the RTM company under section 89 of the 2002 Act which had accrued prior to 3rd March 2025. However the repeal of sections 88 and 89 of the 2002 Act (clearly set out in section 50(4) of the 2024 Act) could be said to have indicated a contrary intention that from the date that the relevant provisions of the 2024 Act were brought into force, that "liability" would no longer exist.

37. The Tribunal is conscious that *in general* under section 16(1)(c) of the 1978 Act the fact that further steps might still be necessary to prove the Applicant's entitlement to claim costs undersection 88 existed before repeal, or to prove the extent of those costs, does not preclude it being regarded as a "right". Similarly it could be argued that there was an acquired right (at least contingent) to assessed costs receivable by the

Applicant, provided only that all appropriate steps by way of claims to the Tribunal are taken. Ultimately however, these do not focus upon the intention of the 2024 Act, which was to address what Parliament perceived to be a "wrong turn" or mischief in term of liability for costs by an RTM company and its members.

38. This is reflected in the fact that the 2025 Regulations 2025 SI 131 brought into force at the same time on 3rd March 2025 a suite of associated amendments in 2024 Act (including sections 20CA and 20J of the Landlord and Tenant Act 1985 relating to service charges associated with cost incurred by landlord and similar entities in responding to right to manage claims). Those provisions in the 2024 Act, were designed to prevent or inhibit the problem of leaseholders being charged for the costs incurred by landlords and other entities in respect of right to manage claims. The amendments introduced by sections 20CA and 20J of the Landlord and Tenant Act 1985 relating to service charges would be of relatively little effect if they did not impact upon costs incurred before 3rd March 2025. To that extent there is an analogy with schedule 8 of the Building Safety Act 2022 considered in *Adriatic Land*.

39. The Applicant's costs submissions of 24 July 2025 (paragraphs 7 – 8) make a different point. The Applicant asserts it would be "unfair" if the provisions in the 2024 Act concerning payments of payments of costs applied to a right to manage claim made "well before the repeal provisions in the 2024 Act were enacted".

40. This argument engages the observations made by Lord Justice Nugee in *Adriatic Land* at paragraphs 136 - 137:

> "136...it has long been recognised that the question is not a simple one of asking whether a statute is retrospective or not; there are degrees of retrospectivity, and the greater the degree of retrospection and the more unfairness involved, the more potent the presumption becomes: see the passage cited by Newey LJ at paragraph 54 above from the judgment of Staughton LJ in *Tunnicliffe*. ....
>
> 137. Similarly Patten LJ referred in *Granada* to a "spectrum" of retrospective effect at paragraph 57 as follows:
>
> > "In approaching this issue, the courts have avoided adopting a rigid or mechanistic rule for determining whether the legislation in question is to be treated as retrospective. Instead, they have recognised the various forms and degrees of retrospective effect which can be incorporated into legislation as a spectrum, and have approached the issues of construction by reference to the degree of unfairness which the particular measure may produce. This is necessarily an objective question which falls to be determined by looking at the legislation and

> its potential effects in general terms."
>
> 138. Third, the presumption "may be overcome not only by express words in the Act but also by circumstances sufficiently strong to displace it"*: Sunshine Porcelain Potteries Pty Ltd v Nash* [1961] AC 927 at 938 per Lord Reid.
>
> 139. Fourth, there is, as Newey LJ has referred to, a well-recognised distinction between laws which alter for the future rights and obligations arising from existing legal relationships and laws which affect existing rights and obligations: see paragraphs 57 to 59 above. Lord Reed referred to this distinction in *Axa* (at paragraph 121), but he went on to say:
>
>> "To the extent that laws of the latter kind may undermine legal certainty more severely, they may be more difficult to justify, but there can be no doubt that justification for such laws sometimes exists. It may exist, in particular, when the legislation has a remedial purpose.
>>
>> As Fuller remarked, at p 53:
>>
>>> "It is when things go wrong that the retroactive statute often becomes indispensable as a curative measure; though the proper movement of law is forward in time, we sometimes have to stop and turn about to pick up the pieces." "

41. The (un)fairness of this outcome is a matter for Parliament. It suffices to say that from at least February 2024 (if not earlier), well before any costs were incurred the Applicant and its solicitors were on notice that the Bill contained provisions that would restrict the Respondent's possible liability for the RTM for such costs on the basis that "An order can only be made if the claim notice is withdrawn or ceases to have effect and the RTM company has acted unreasonably". Those solicitors involved had experience in the field and charged at the rate of a Grade A fee earner in central London: paragraphs 20-21 of the Applicant's submissions of 4th June 2025. There is no suggestion that any of the provisions of the 2024 Act were not duly publicised in advance.

Conclusion on interpretation

42. The provisions of sections 87A and 87B of the 2002 Act (as inserted by the 2024 Act) were clear. Section 50 of the 2024 Act properly read amends the 2002 Act with immediate effect. So far as the Tribunal is aware there was no expectation that transitional provisions would be enacted by regulation or that costs incurred in respect of claim notices served before commencement would be subject to the former statutory regime.

43. If the former statutory regime were to apply to claim notices served before 3rd March 2025, that would be an arbitrary distinction between categories of applicants for costs before that date and those applying after that date. That distinction would not be consistent with the statutory purpose. The statutory purpose evidenced by the explanatory note and the preamble was to change the regime so as to impose a general rule that RTM companies and RTM company members are not liable for the costs of others because of the RTM claim. The legislature must be taken to have intended that the amendment was to take effect on all claims as from 3rd March 2025.

The sequence of events

44. LH Property Management ("LP") the Respondent's representative served the claim form upon the Respondent by letter of the 1st August 2024 referring to the property as comprising of 55 flats and garages 1 to 22. Wallace LLP' s letter of 15th August 2024 [54-55], requested a copy of the register of members of the Respondent. In addition requests were made for service of the claim notice about other landlords for evidence of service of a notice of invitation to participate on qualifying tenants who were not members of the RTM company.

45. In response LP sent an e-mail on the 28th August 2024 which attached the register of shareholders but contained the following notice of intended withdrawal:

> "in view of the omission from the claim notice of the sub leasehold interests I propose to reissue the claim notice re-dated to ensure that their interests are protected"

46. Wallace LLP replied within the hour asking for formal confirmation that the claim notice of 1st August 2024 "is withdrawn". Wallace LLP wrote again by e-mail on 3rd September 2024 asking for confirmation by returned the claim notice was withdrawn. By further e-mail on 5th September 2024 Wallace LLP wrote to LP as follows after referring to earlier emails:

> "If confirmation of the withdrawal of the claim notice is not received by close of business Monday 9 September 2024 my client will have no alternative then to prepare and serve a counter notice denying entitlement the course of which the RTM company will be responsible for"

47. Within the hour at 10.51 on 5th September 2024 LP responded by e-mail to Wallace LLP as follows:

> "Forgive the delay I've had massive IT problems following a hack Please consider the application withdrawn and we will re commence the process from scratch in due course."

48. On 26 September 2024 Peter Cobrin of LP wrote "I am having a meeting with residents at Bishopric Court tomorrow and I need to present them with a definitive schedule of your <u>reasonable</u> costs. Please provide this!" Wallace LLP responded the next morning (27 September 2024) by e-mail asserting fee earner charged time of 4 hours 18 minutes @ £465.00 per hour = £1999.50" [62]. An outline of works carried out was also given in that email.

49. Wallace LLP clarified later the same morning (on 27th) that the land registry fees in the following pages at [63-78] were also claimed – see [91].

50. On 4th June 2025 LP wrote to the Tribunal saying that it had not "received any of the Tribunal directions or communications relating to this application" and the Respondent "ceased to function some time ago has never even traded has no directors no company secretary and will undoubtedly be dissolved as a result" [79].

51. The Applicant asserts that the request for voluntary strike off made by LP was with "the apparent intention" of preventing statutory costs from being recovered: paragraph 19 of costs submissions of 24th July 2025. No evidence has been put forward to substantiate that assertion.

52. At the date of this decision the Respondent has not been dissolved.

Issue No 2: Determination on the footing that section 87A and 87B of the 2002 Act apply

53. The Tribunal has not been referred to any decisions upon the question of the meaning of the term "acts unreasonably" in section 87B(2)(b) of the 2002 Act. The principal analogue to that phrase in the context of costs is in rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013/1169 the Tribunal may make an order in respect of costs only— (b)if a person has *acted unreasonably* in bringing, defending or conducting proceedings";.

54. In that context *Lea v GP Ilfracombe Management Co Ltd* [2025] 1 W.L.R. 371 the Court of Appeal held in bringing, defending or conducting proceedings within rule 13(1)(b) if its conduct had been vexatious or designed to harass the other party rather than to advance the resolution of the case, there was no requirement that conduct had to be vexatious or oppressive in order for the party to have "acted unreasonably", for that purpose.

55. In *Lea* the Court held a good practical rule is for the Tribunal to ask: would a reasonable person acting reasonably have acted in this way? Is there a reasonable explanation for the conduct in issue? The Court expressly approved guidance in *Willow Court Management Co (1985) Ltd v Alexander* [2016] L & TR 34.

56. The Court approved the following passage in *Willow Court* at [25]:

> "It is not possible to prejudge certain types of behaviour as reasonable or unreasonable out of context, but we think it unlikely that unreasonable conduct will be encountered with the regularity suggested by Mr Allison and improbable that (without more) the examples he gave would justify the making of an order under rule 13(1)(b) . For a professional advocate to be unprepared may be unreasonable (or worse) but for a lay person to be unfamiliar with the substantive law or with tribunal procedure, to fail properly to appreciate the strengths or weaknesses of their own or their opponent's case, to lack skill in presentation, or to perform poorly in the tribunal room, should not be treated as unreasonable.

57. The Tribunal finds the approach in lea helpful even if the context was not on all fours with the right to manage claims.

58. If the new costs regime imposed by the 2024 Act applies, the Applicant asserts the Respondent acted unreasonably for the purpose of section 87B of the 2002 Act in the following respects:

    (i) Serving a Claim Notice which was invalid (in that it failed to comply with the mandatory statutory requirements) which thereafter necessitated an investigation by the Applicant's solicitors and the incursion of costs by the Applicant;

    (ii) Failing to acknowledge the invalidity of the Claim Notice until 28 August 2024 by which time the Applicant had incurred further costs investigating the Claim Notice;

    (iii) Failing to formally withdraw the Claim Notice until 5 September 2024; and

    (iv) Undertaking action to remove the Respondent company officers and otherwise dissolve the Respondent company with the apparent intention of preventing statutory costs being recovered from the Respondent company.

59. In relation to the first point, it appears from the letter from Wallace LLP of 15th August 2024 [54-55] that the claim notice did was not served upon two other landlords being Fencott Limited and Brickfield Properties Limited. It is assumed that the reference to mandatory statutory requirements is to section 79(6) of the 2002 Act. This was the same problem faced by the qualifying tenants who serve a claim notice in *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2024] 3 W.L.R. 601 where it was held that such a failure did not *without more* invalidate the claim notice. The Upper Tribunal decision in the same case to similar effect had been decided in 2023. It is far from clear the claim notice serve by the Respondent would have been found to have been invalid, if it had not been withdrawn. On the information currently before the Tribunal, it is not possible to draw the conclusion that there was

no reasonable explanation for the omission to serve the notice on other landlords.

60. In relation to the second complaint, LP acknowledged the omission of reference to other leasehold interests in the e-mail of 28th August 2024 and the intention to re-issue. This period of 13 days cannot be categorised as "unreasonable". It is not possible to draw the conclusion that there was no reasonable explanation for this period of time which might have included the need to consult others or take professional advice.

61. In relation to the third complaint, LP asserted "it had massive IT problems following a hack" and offered an apology in its e-mail in its email of 5th September 2024 for not responding sooner [60]. This version of events is not contested. On the evidence before the Tribunal, it is not possible to draw the conclusion that there was no reasonable explanation for the delay in explicitly confirming the withdrawal, particularly as there is no evidence the Respondent did not had the benefit of specialist legal advice. There may have been a number of individuals including actual and potential members of the Respondent to consult.

62. The fourth complaint appears to be directed against individuals who are not a party to this application. Even if individuals such as Mr Cobrin as director of the Respondent are regarded as the agents of the Respondent, it is not possible to draw the conclusion that there was no reasonable explanation for the steps taken. There is no evidence to support the assertion that the steps taken were with the intention of preventing statutory costs being recovered from the Respondent company.

Issue number 4: discretion

63. If the terms of new section 87B of the 2002 Act grant a discretion to refuse to make an order for costs where other conditions are satisfied, it is likely that discretion should only be exercise in residual category of cases where the circumstances presented are not within the usual run of cases. It is possible that individual members of the Respondent may wish to draw attention to circumstances in which such discretion should be exercised in their favour.

Issue number 5: Determination on the footing that section 88 of the 2002 Act applies to this application

64. The Tribunal considers whether the sums claimed are reasonable costs under sub-sections 88(1) and 88(2) of the 2002 Act, in the event its determination that that provision does not apply to this claim is challenged.

65. It is far from clear that if the costs claimed were to be borne by the Applicant it would have been content to pay an hourly rate of £465.00 per

hour, given they were using their choice of solicitor who asserted the knowledge and capacity to deal with this kind of work on their behalf.

66. In a competitive legal market, where (as appears to be the case here) a client is the source of repeat work, albeit in a specialist field, the Tribunal would have expected a discounted hourly rate rather than full market hourly rate to be payable. It appears from the fact that the Respondent's invoice was addressed to Brickfield Properties Limited at page 78 (another landlord) that Wallace LLP would also have expect to earn fees from advising Brickfield Properties Limited or have a commercial relationship with that company, presumably another connected or associated company in the same group in relation to the same claim. (The reference to consulting with the solicitor to Brickfield Properties Limited landlord in the time schedule supporting costs claimed is not explained).

67. The Tribunal has not seen evidence of the nature of the retainer of Wallace LLP by the Applicant and is asked to make findings about costs on the evidence provided.

68. From details of time spent given by Wallace LLP at page 18, it appears the Applicant had managing agent operating on its behalf at the property. As the property is a medium sized development, it would be expected the managing agents would have a good deal of information relevant to the right to manage claim including records of registered leaseholders and in some cases official copies of the land register. It appears from the same details at page 17 that Wallace LLP had dealt with this property previously and were aware of other leasehold interests at the very outset of their instruction. It would be extraordinary if the managing agents were unaware of these different leasehold interests.

69. On that basis, and on the assumption that the interests of Brickfield Properties Limited and the Applicant were aligned, it would have been clear that the Respondent's failure to serve the claim notice on other landlords would have be fatal from the outset.

70. In those circumstances, if the Applicant as the client (apparently part of the Freshwater Group according to the Wallace LLP invoice) had been personally liable for all such costs, the Tribunal is unpersuaded it would have authorised (or been willing to subsequently be found liable for if there was a loose form of retainer) nearly 4 hours of work for a Grade A fee earner and £756.00 plus VAT to obtain official copies of the land register. The Tribunal infers the Applicant is sophisticated and experienced from the information given in Wallace LLP's costs submissions.

71. It is also unclear whether the VAT of £541.00 is recoverable by the Applicant or by Brickfield Properties Limited the entity to which Wallace LLP's invoice is addressed at page 78. In the circumstances. The Applicant has not satisfied the Tribunal that the VAT elements of this invoice is part of the reasonable costs that have been incurred by the Applicant following this claim notice.

72. Doing the best it can on the material available the Tribunal would have expected a sophisticated client with an ongoing relationship with Wallace LLP (or another appropriate legal adviser) to have agreed to be liable for £1000.00 (2.5 hours' work at £400.00 per hour) in the circumstances of this case where there were pre-existing managing agents and the key point about the merits of this claim was available to be discovered at the very outset. This finding is only relevant if the assessment is made under section 88 of the 2002 Act.

H Lederman
Tribunal Judge

25th September 2025

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.