HM Courts & Tribunals Service

Property Chamber
London Residential Property
First-tier Tribunal

10 Alfred Place, London, WC1E 7LR
Telephone: 020 7446 7700
Facsimile: 020 7637 1250
E-mail: rplondon@hmcts.gsi.gov.uk
DX: 134205 Tottenham Court Road 2

Direct Line: 0207 446 7805

27 MAR 2014

Comptons Solicitors
DX: 57057 Camden

Your ref: JSC.vp.11395.1
Our ref: LON/00AY/LCP/2013/0015

Date: 26 March 2014

Dear Sirs

RE: Commonhold & Leasehold Reform Act 2002 - Section 88(4)

PREMISES: Brixton Hill Court, Brixton Hill, London, SW2 1QX

The Tribunal has made its determination in respect of the above application(s) and a copy of the document recording its decision is enclosed. A copy is being sent to all other parties to the proceedings.

Any application from a party for permission to appeal to the Upper Tribunal (Lands Chamber) must normally be made to the Tribunal within 28 days of the date of this letter. If the Tribunal refuses permission to appeal you have the right to seek permission from the Upper Tribunal (Lands Chamber) itself.

If you are considering appealing, you are advised to read the note attached to this letter.

Yours faithfully

Mrs Cheryl Reid
Case Officer

First-tier Tribunal, Property Chamber
Residential Property

GUIDANCE ON APPEAL

1) An appeal to the Upper Tribunal against a decision of a First-tier Tribunal (Property Chamber) can be pursued only if **permission to appeal** has been given. Permission must initially be sought from the First-tier Tribunal. If you are refused permission to appeal by the First-tier Tribunal then you may go on to ask for permission from the Upper Tribunal (Lands Chamber).

2) An application to the First-Tier Tribunal for permission to appeal must be made **so that it is received by the Tribunal within 28 days after the date on which the Tribunal sends its reasons for the decision.**

3) If made after the 28 days, the application for permission may include a request for an extension of time with the reason why it was not made within time. Unless the application is made in time or within granted extended time, the tribunal must reject the application and refuse permission.

4) You must apply for the permission **in writing**, and you must:
   - identify the case by giving the address of the property concerned and the Tribunal's reference number;
   - give the name and address of the applicant and any representative;
   - give the name and address of every respondent and any representative
   - identify the decision or the part of the decision that you want to appeal;
   - state the grounds of appeal and state the result that you are seeking;
   - sign and date the application
   - send a copy of the application to the other party/parties and in the application record that this has been done

The tribunal may give permission on limited grounds.

5) When the tribunal receives the application for permission, the tribunal will first consider whether to review the decision. In doing so, it will take into account the overriding objective of dealing with cases fairly and justly; but it cannot review the decision unless it is satisfied that a ground of appeal is likely to be successful.

6) On a review the tribunal can
   - correct accidental errors in the decision or in a record of the decision;
   - amend the reasons given for the decision;
   - set aside and re-decide the decision or refer the matter to the Upper Tribunal;
   - decide to take no action in relation to the decision.

If it decides not to review the decision or, upon review, to take no action, the tribunal will then decide whether to give permission to appeal.

7) The Tribunal will give the parties written notification of its decision. **If permission to appeal to the Upper Tribunal (Lands Chamber) is granted**, the applicant's notice of intention to appeal must be sent to the registrar of the Upper Tribunal (Lands Chamber) so that it is received by the registrar within **28 days** of the date on which notice of the grant of permission was sent to the parties.

8) **If the application to the Property Chamber for permission to appeal is refused**, an application for permission to appeal may be made to the Upper Tribunal. An application to the Upper Tribunal (Lands Chamber) for permission must be made within **14 days** of the date on which you were sent the refusal of permission by the First-tier Tribunal.

9) The tribunal can **suspend the effect of its own decision**. If you want to apply for a stay of the implementation of the whole or part of a decision pending the outcome of an appeal, you must make the application for the stay at the same time as applying for permission to appeal and must include reasons for the stay. You must give notice of the application to stay to the other parties.

These notes are for guidance only. Full details of the relevant procedural provisions are mainly in:

- the Tribunals, Courts and Enforcement Act 2007;
- the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013;
- The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010.

You can get these from the Property Chamber or Lands Chamber web pages or from the Government's official website for legislation or you can buy them from HMSO.

The Upper Tribunal (Lands Chamber) may be contacted at:

43-45 Bedford Square
London WC1B 3AS

Tel: *0207 612 9710*
Fax: *0207 612 9723*

Email: *lands@tribunals.gsi.gov.uk*

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AY/LRM/2013/0015**
Property	:	**Brixton Hill Court, Brixton Hill London SW2 1QX, 1QY, and 1QZ**
Applicant	:	**Springquote Limited**
Representative	:	**Adrian Carr instructed on behalf of the Applicant by JP Leitch LLP**
Respondent	:	**Brixton Hill Court RTM Company Limited**
Representative	:	**Compton Solicitors LLP- Represented by Mr Compton**
Type of Application	:	**For the determination of liability to pay costs under s88 (2) of CLARA 2002 and the reasonableness of costs incurred.**
Tribunal Members	:	**Ms M W Daley LLB (hons)** **Mr I Thompson FRICS** **Mr A Ring**
Date and venue of Hearing	:	***14 January 2014 at 10 Alfred Place, London WC1E 7LR and Reconvened on 25 February 2014***
Date of Decision	:	**25 March 2014**

DECISION

Decisions of the tribunal

- The Tribunal makes the determinations as set out under the various headings in this Decision

- The Tribunal makes its determinations on the sums payable as set out in the Scott Schedule.

- No order is made on the Respondent's application under paragraph 10 of Schedule 12 to CLARA 2002.

Introduction/background

1. This matter concerns an application for costs under section 88(4) of Commonhold and Leasehold Reform Act 2002("CLARA)".

2. The application arises following an application by the Respondents, Brixton Hill Court RTM Company Limited, (LON/00AY/LRM/2013/00013) to determine the validity of the Company's notices under section 79 of the Commonhold and Leasehold Reform Act 2002("CLARA") claiming the Right to Manage.

3. The building, which was the subject of the Application, comprises a development of 144 flats in two blocks. The Front block comprises flats 1-88 and the rear block comprises flats 89-144. The blocks are connected by a concrete walkway.

4. On 25 September 2013 the LVT issued a decision that the RTM Company did not have the right to manage the premises. As a consequence Springquote Ltd, as the Respondent to the RTM application, was entitled to its costs under section 88(3) & (4) of the 2002 Act.
5. At the hearing of the application for the Right to Manage Springquote Ltd gave notice of costs incurred in the sum of £33,565.24. The Applicant RTM Company indicated that these cost were not agreed.

6. At that hearing the Tribunal informed the parties that the costs application under section 88(4) of the 2002 Act could not be considered under case no. No LON/00AY/LRM/2013/00013, and would be considered as a stand-alone application. Springquote Limited accordingly issued an application together with a schedule of cost in the sums of £33,565.24 up until 28 June 2013, at the hearing of the cost application the Applicant's also included the cost of preparing for the cost hearing, making a total claim of £42,271.00. The Respondents wrote to the Applicant notifying them of their intention to contest the costs. Following this application, directions were given on 25

September 2013, and this matter was set down for hearing on 14 January 2014.

7. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

8. At the hearing the Applicant was represented by Mr Adrian Carr of counsel. The Respondent Right to Manage Company was represented by Mr Compton. Both advocates had previously appeared at the Respondent's application Lon/00AY/LRM/2013/0013. Also present were a number of individual leaseholders. The Tribunal indicated at the hearing that it would consider the evidence of the Applicant on each heading of cost, and then the Respondents would make their response on that issue before the Tribunal considered the next head of cost.

9. The following additional documents were provided to the Tribunal -: (a) a revised schedule of cost (b) the Applicant's Skeleton Argument (b) the Respondent's Skeleton Argument. (c) Witness statement of James Stephen Crompton.
10. The Tribunal prior to the hearing asked whether both parties were content for this matter to be determined by the same Tribunal who had dealt with the Respondent's Application for the Right to Manage.
11. The Applicant through Mr Carr stated that they took no issue with the composition of the Tribunal. However, Mr Crompton although he stopped short of asking the Tribunal to recuse itself, stated that he was concerned that the matter was being dealt with by the same tribunal who had considered the substantive application under section 84(3) of CLARA 2002 for the Right to Manage, as in his view, (for reasons that were fully rehearsed in his skeleton argument), the Tribunal's decision in the Application LON/00AY/LRM/2013/00013, was wrongly decided in the landlord's favour.
12. The Tribunal determined that-: "the relevant notice of claim is the Notice dated 19 February 2013

- The Tribunal considers that the wording of section 81(3) of the 2002 act make it clear that there can be only one claim notice at a time. Accordingly the Tribunal has considered that any notice served after the first notice was invalidly served and does not have the effect of correcting any errors which may have occurred in the first notice.

- The Tribunal determines that the omission of two tenants from the claim notice has the effect of invalidating the Claim Notice.

- The Tribunal determines that the premises are made up of two buildings and that for the purpose of a Notice of claim to acquire the right to manage two notices ought to have been served.

- The Tribunal determines that one RTM Company may be set up and serve a valid claim notice in respect of the two buildings.

- In light of these findings, the Tribunal determines that the Applicant has not acquired the right to manage the property.

- The Tribunal make directions in relation to the separate application under Section 88 of CLARA 2002."

The first issue was the general principles to be applied in determining the Applicant landlord's entitlement their costs under section 88(1)

13. Counsel Mr Carr set out the background. The original RTM application which led to this cost application had initially been set down for a one day hearing. At the close of that hearing it had been apparent that additional time was needed. The parties had been directed to file written closing submissions, and the matter was listed for a further day in which the Tribunal considered the written submissions, inspected the premises, and made its determination.

14. Mr Carr stated that this matter had been a complicated case. In his skeleton argument he submitted that-:
"CLRA 2002 subss.84 (6) and (7) provide: 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.
A determination on an application under subsection (3) becomes final —
If not appealed against, at the end of the period for bringing an appeal, or
...The question of whether a RTM company in principle is liable to pay a landlord's costs may be determined by reference to s.88 of CLRA 2002 as follows:
- *Springquote is the landlord of both buildings comprising "the premises" in respect of which the RTM was claimed and Springquote therefore satisfies the criterion in s.88 (1).*
- *The RTM Company gave Springquote a claim notice within the meaning of s.88 (1).*
- *The LVT dismissed the RTM Company's application for a determination that it was entitled to acquire the RTM those premises and so the criterion in s.88 (3) has been met.*
- *As a consequence, under s.88 (3) the RTM Company is liable in principle to pay Springquote's costs.*

15. Mr Carr further submitted that the costs were payable from the service of the first notice under 88(1) and 88(3) of the Act, until the claim notice ceased to have effect when the matter was finally determined. In Mr Carr's submission this was when the period for mounting an appeal lapsed.

16. .Mr Compton relied upon what he classed as an issue of policy. In para 8 -10 of his skeleton argument he stated that -: *"It is submitted that owing to the astronomical level of costs claimed by the Applicant there is a clear policy issue that the Tribunal should consider. A costs order of this magnitude could have detrimental effect on the right to manage procedure in that it is likely to deter RTM's from pursuing a right to manage claim to a hearing even if it may have a legitimate claim given the potential cost exposure."*

17. He argued *"This is even more important owing to the inherent imbalance in the system as to costs. If an RTM's claim is dismissed it may have to pay the Landlord's reasonable costs for the hearing. By contrast if an RTM is successful there is no reciprocal requirement of the landlord to pay the RTM's costs. A landlord's only costs liability will usually be its own unless an order is made under Schedule 12, paragraph 10 of the CLRA 2002. This dynamic means that a landlord can deny a legitimate claim on technicalities without significant cost implications. It is submitted that if the Tribunal determines costs of anywhere near £42,000 the pressure of this dynamic on RTM will be significantly increased and given the potential exposure to costs the RTM will be deterred from proceeding to a hearing even if it has a legitimate claim. The magnitude of the costs application in this case has had a detrimental effect. The level of costs was in part a reason why the RTM decided [not] sic to appeal the Tribunal decision. This is even more concerning since it appears that the Tribunal decision is wrong. The main reason why the Respondent's claim failed was due to the ruling that they could not rely on subsequent Notices of Claim even if the prior Notices were invalid. An Upper Tribunal decision of Avon Freehold Ltd [2013]UKUT 02134 (LC) dated July 2013 which was not available at the hearing states at paragraph 73 that if a claim notice is invalid an RTM is not prevented from serving a second claim notice which was the Respondent's case. It was also submitted by the Respondent to the Tribunal that whether the buildings were one or two did not matter since the RTM could serve one Claim Notice in respect of both buildings. This has been held to be correct in the Upper Tribunal decision in Ninety Broomfield Road RTM Company Ltd (and others) [2013] UKUT 606 (LC) dated November 2013 (again not available at the hearing). Clear injustice has been caused in this case and the Tribunal should consider the adverse consequences of such high costs which have the effect of scaring RTM's from continuing...."*

18. He submitted that the RTM Company had effectively been *"scared to litigate further"*, not withstanding that they considered the decision on the RTM

claim to be wrong. Mr Compton stated that the cost being a prohibition for exercising the Right to Manage was never the intention of Parliament.

19. The Tribunal was addressed by Mrs Angela Saul a leaseholder who was a member of the Right to Manage company, who sought permission to speak and who addressed the Tribunal with eloquence and passion in support of the points made by Mr Compton in relation to the intention of Parliament on Right to Manage, and the frustrations experienced by the leaseholders, who in their view had had their legitimate rights to manage the premises frustrated.

20. Counsel, Mr Carr in reply, stated that Mr Compton's approach was that the costs were far too high and that they should be reduced. The Tribunal should note that the statement of cost was endorsed with a statement to the effect that the cost did not exceed the amount that the landlord was liable to pay. It was simply untrue to say that the costs were artificially inflated, or manufactured in some way. This amounted to an accusation of professional misconduct.

21. Mr Carr also submitted that it would not be correct for the Tribunal to look at the "costs in the round" in the manner suggested by Mr Carr and say that they were high and accordingly reduce them.

22. The correct approach was for the Tribunal to determine whether each item of cost was reasonable, by asking-: (i) did the work need to be done (ii) was the work done (iii) was the item charged at a reasonable rate.

23. Mr Carr submitted that when the cost schedule was prepared in June the Applicant would not have known whether they won or lost, they would only have known that they were liable to pay the cost, on the basis invoiced by the solicitors. This should dispel any doubts that the costs were anything other than the cost that the landlord was liable to pay.

24. At Paragraph 13 of the Applicant's statement of case it was submitted that Springquote's costs of these proceedings have been inflated because of the manner in which the case was conducted by the Respondent. This was because in the words of the Applicant-: *"...Springquote's costs of these proceedings have been inflated principally because:*

The RTM Company served 8 alternative claim notices, all of which had to be considered in order to determine whether each was valid and in respect of each of which Springquote needed to serve a counter-notice

The RTM Company failed or refused to withdraw any of the claim notices it had served. As a result, Springquote was required to deal with every claim notice both in the Statements of Case and at the trial.

The RTM Company failed or refused to specify upon which claim notice(s) it intended to rely at trial. As a result, Springquote was required to consider every claim notice at trial.
The RTM Company's solicitors wrote lengthy and repetitive correspondence to the solicitors for Springquote, which required careful consideration and response.
The RTM Company first asked for the application to be dealt with on paper and then stated that the time estimate for the hearing should be 2 hours. In the event, the hearing took one whole day, followed by written Closing Submissions and an inspection of the subject premises. The incorrect time estimate proposed by the RTM Company increased the costs incurred by Springquote and indeed the expense of the matter to the FTT..."

25. In reply Mr Compton submitted that the costs were out of kilter with the sums normally awarded. In paragraph 5 of his skeleton argument he submitted that-: *"... the costs vastly exceed the level of costs generally awarded by Tribunals. Although the Tribunal is of course an expert Tribunal and will know the type of costs it awards to assist the Witness Statement of James Compton gives examples of the level of costs. It can be noted that costs are nowhere near the level of costs claimed by the Applicant and range from £380 to £12,800. Even the latter is significantly higher than the next highest costs awarded of £7500. The costs of £12,800 involved a case concerning 4 buildings with 120 flats. Even at costs of this level the Applicant's costs are nearly four times higher. In Kingsmere the leaseholders were deterred from applying to the Right to Manage due to the level of costs and such high costs applications are a policy consideration.... In Kingsmere the costs of the landlord's solicitors were £5019. The Applicant's solicitor is demanding £34,385.70 or seven times higher than the said costs order."*

26. Mr Compton further submitted that there was no independent evidence provided by the Applicant other than the statement of cost prepared by their solicitor to verify that the cost had been incurred.

27. Mr Compton relied upon a number of decisions which he appended to his witness statement, in support of his submissions on the range of cost awarded by Tribunals under Section 88 of the provisions in relation to costs. The costs awarded ranged from £405.00 plus VAT in *Springfield Management RTM Company Ltd* to £12,802.80 in *Anstone Properties Limited*. The cases dated from 2009-2012.

28. The Respondent did not accept that their conduct had led to an increase in the cost, he cited issues that had formed the basis of the Applicant's counter notice which had not subsequently been pursued at the hearing, such as whether the RTM had the requisite number of qualifying tenants.

29. Mr Compton also stated that solicitor's acting for the landlord did not have to respond to each of the claim notices served, in the same manner as if each Claim notice was the only one served. Mr Compton submitted that the Applicant's solicitors, had they applied the approach that their client was personally liable would have exercised the option to "do the bare minimum"

30. Mr Compton in his skeleton argument stated-: *"... it was therefore unnecessary to respond to the Claim Notices served after the first Claim Notice. It is submitted that had the Applicant been personally liable for the costs it would have instructed its solicitors to undertake the bare minimum of work after service of the First Claim Notice given it would have been unnecessary. Such an approach as to costs is reflected in Plintal SA [LON/00AF/LRM/2005/0012 at paragraph 15:*

> It appeared to us that any costs recoverable by the Respondents would in any event be minimal. Sub-clause 88(2) of the Act is clearly intended to act as a check on the landlord's recoverable costs by limiting them to those that the landlord itself would expect to pay if it were personally liable for the bill. A properly informed client would have expected its legal representatives to take the issue of service at the outset and it would not expect to pay any costs subsequently incurred as a result of those representatives having failed to do so. If the point had been taken then, as observed above, the concession that was ultimately forthcoming would have been made at the outset and that would have been the end of the matter.

31. Mr Carr rejected this criticism. In para 18 of the skeleton argument he stated-: *"The RTM Company suggests that because each of the 8 claim notices was in similar form, it was unnecessary and unreasonable for Springquote's solicitors to have considered each claim notice in such detail. This approach is incorrect. Each claim notice stands on its own merits and Springquote needed carefully to check and consider*

each claim notice to check that it was valid and all of the details of the participating tenants were included in the schedules."

The Tribunal's decision on the approach to take in relation to assessing the costs payable under section 88 (3) of the Commonhold and Leasehold Reform Act 2002

32. Although the Tribunal did not think it appropriate for this decision to act as a review of the decision in Right to Manage Application. The Tribunal has in the course of reaching its determination on the cost application had the opportunity to reflect upon its decision in Application No Lon/00AY/LRM/2013/0013.

33. The Tribunal has also considered with interest the authorities provided by the Respondent, which, the Tribunal accepts, may have in general terms been helpful had these Upper- Tier decisions been available before the Tribunal on the Right to Manage Application. (Whilst this Tribunal can only speculate on what effect these decisions would have had upon the decision reached by the Tribunal) The Tribunal considers that the issues raised in *Avon Freeholds Limited [2013] UKUT 0213 and Ninety Broomfield Road RTM Company Ltd and Triple rose LTD* whilst in some respects are similar, are not on all points the same as the issues raised in Application No Lon/00AY/LRM/2013/0013. The Tribunal considers that the cases referred to above can be readily distinguished from the facts in the Application, which were before the Tribunal.

34. The Tribunal also noted that it was also open to the Respondent to appeal the decision, which for the reasons set out in Mr Compton's submissions they chose not to do. Nevertheless, if Mr Compton was correct in his submissions, and the leaseholders had been successful in their application to obtain the Right to Manage, they would still have faced the prospect of paying costs under section 88 as up until the determination there were a number of notices which had not been withdrawn or determined by the Tribunal. Even on the most optimistic construction by the Applicant RTM Company there would have been at least six notices which were not withdrawn prior to the hearing, which would have attracted costs, as these notices were "live" before the Tribunal, and the RTM Company had not set out which notices were considered to be invalid.

35. In the statement of case in support of the costs application, which was prepared before the determination in relation to the Right to Manage, the Applicant stated in paragraphs 8-10 that-: "*... even if the Tribunal finds that the Costs Respondent is entitled to acquire the Right to*

Manage in respect of the subject premises (and for the avoidance of doubt, the Costs Applicant denies that the Costs Respondent is so entitled), given the nature of this case and the Claims Notices, at least 6 of the Claim Notices must be invalid. 9. Even after issuing the RTM Application, the Costs Respondent failed to specify which particular claim notice or on which 2 claim notices the Costs Respondent was relying. 10. Further, prior to the RTM Application, being issued; the Costs Respondent's solicitors had bombarded the Costs Applicant's solicitors with lengthy, repetitive aggressive and unnecessary correspondence... The Costs Applicant was put to the time and expense of considering and dealing with such correspondence..."

36. The Tribunal notes that Mr Compton also criticises the approach taken by the Landlord's representative. In paragraph 4 of the Reply to the Application he states *"... the landlord acted unreasonably and vexatiously in pursuing the unmeritious Grounds which prevented the RTM Company from withdrawing the Notices and re-serving them thus avoiding litigation altogether..."*

37. The Tribunal notes that the obligations in section 88 were known by the Applicant RTM Company, and given this there was a strong case for the Applicants' solicitor proceeding with prudence and caution, whilst keeping a careful eye on the costly nature of litigation.

38. The Tribunal have determined on this issue that the correct approach to take is that advanced by Mr Carr, that accordingly the approach taken by the Tribunal will be to ask-: (i) did the work need to be done (ii) was the work done and (iii) was the item charged at a reasonable rate.

39. The Tribunal noted Mr Compton's submissions, concerning the intention of Parliament, and the statement made by Mrs Saul. The Tribunal also carefully noted the decisions relied upon by Mr Compton in support of his claim that the costs were excessive. However the Tribunal noted that these cases were not helpful. In the Right to Manage Application, the RTM took a fairly scatter gun approach to the litigation and this particular strategy has in the view of the Tribunal had a direct bearing on the cost. [The Tribunal has no information on the background to these cases, which may have involved discrete and limited issues, unlike the case before this Tribunal.]

40. The Tribunal noted that Section 88 required the Respondent to pay such costs as are payable by the Landlord to his Solicitor, as if the landlord were obliged to pay the cost in circumstances where they would not be recoverable from a third party. The Tribunal considers

that such a paying party would, on facing a bill, the size of this bill would have considered the bill with critical eyes, and subjected the bill to detailed scrutiny, with a view to reducing the paying party's cost liability.

41. The paying party would raise issues such as those raised by the Tribunal concerning the costs in order to reduce the party's obligation to pay. The Tribunal noted that in a commercial relationship such as exist between the Landlord and the Solicitor there would be negotiations between the solicitor and the client, and that these negotiations would arise from the same careful consideration which the Tribunal has applied.

Whether the Applicant Landlord is entitled to recover cost of preparing the cost application and the associated cost "...Cost on cost".

42. At the hearing Mr Carr submitted that"... *The costs of the section 88(4) application for costs are recoverable as costs incurred by Springquote as a result of service of the claim notices upon Springquote..."*

43. Mr Carr further submitted in paragraph 20-21 of the skeleton argument that *"...The substantive application and the costs application are inextricably linked: the costs application arises out of the substantive application and it would be entirely artificial to differentiate between costs arising under each application. Alternatively, if the RTM is only liable to pay the costs arising out of the service of the Claim Notices up to the date on which the substantive application was finally determined, the FTT's decision was sent under cover of a letter dated 26/9/13, which was received by Springquote's solicitors on 27/9/13. The RTM Company had 28 days in which to appeal the substantive decision, and it was only upon expiry of that time limit that the decision became "final" within the meaning of s.89. Therefore the FTT's substantive decision became final on 25/10/13."*

44. The Tribunal asked Mr Carr for the provisions upon which he relied in support of his contention. Mr Carr submitted that he did not rely on any specific provision in the act, however in his submission the cost of the cost application was caught by the provisions in Section 88(3).

45. Mr Compton did not accept these submissions. He stated that there was nothing in the act which enabled the landlord to claim what he submitted were, "*cost upon costs*" In his submission the costs were limited to the substantive proceedings rather than any cost associated with preparing for the cost application. Given this, Mr Compton did not accept that costs in connection with today's hearing were payable in accordance with section 88.

The Tribunal decision on this issue

46. The Tribunal noted that neither party relied upon any authorities in support of its contention. The Applicant submitted that these cost arise in consequence of the claim notice. He cites that -: *The substantive application and the costs application are inextricably linked..."*

47. The Respondent argues that express wording by Parliament would be needed in order for the Tribunal to find that costs arising in consequence of the landlord seeking to recover its costs on service of the claim notice and for the hearing and for seeking costs are payable.

48. The Tribunal noted that the section anticipates that costs may arise in consequences of the service of a notice and that in the event that they cannot be agreed the Act makes provision for a determination, given this and the wording of section 88(3) which refers to the RTM Company being liable to pay any cost incurred "... as party to ***any proceedings under this chapter..***" The Tribunal determines that this by implication envisages that there may be more than one proceeding arising as a result of the service of a notice. This in the Tribunal's view is wide enough to provide for the recovery of the cost of recovering the cost incurred as a consequence of the claims notice/notices having been served.

The specific cost and details of the items upon which they were incurred

49. The Applicant had instructed JB Leitch Solicitors LLP, a Liverpool firm who were residential property specialists with whom they had previously had a business relationship; the solicitors had previously acted on their behalf. The solicitors had experience of dealing with leasehold properties matters on the Applicant's behalf.

50. The fees earners who had conduct of this matter were Richard Owen, who had a billing rate as both a grade c and a grade B fee earner during the course of this hearing. His rates were £161.00 grade C, and £192.00 Grade B, and Andrew Jackson who was a grade D fee earner, who's charging rate was £118.00 per hour.

51. A Grade C fee earner was defined as a newly qualified to five years post qualified solicitor. A grade B was 5-10 years qualified solicitor. A grade D was a para legal/ trainee solicitor.

52. Mr Compton had no specific objection to the rates charged and the grade of fee-earner used.

- He stated that-: *"No evidence has been provided other than the statement of costs that the costs have been incurred by the Applicant. Given the significant costs claimed it is submitted that the burden of proof for establishing them should be higher and the Tribunal should expect to see evidence of how such costs have been incurred. For example they should*

expect to see the Client Care Letter detailing an estimate of the costs from the outset which would of had to the provided to the Applicant, they should expect to see the letters, documents and time recording sheets evidencing the statement of costs, copies of periodic invoices...etc. It is submitted that the Tribunal should be wary of awarding such astronomical costs based on the Statement of Costs alone."

53. The Tribunal then referred to the Applicant's Costs Scott Schedule and each party addressed the Tribunal on the issue of cost. Mr Carr submitted that the cost had been proportionate and that the Applicant's solicitor in dealing with this matter had acted appropriately and considered each of the items set out in turn.

54. The Tribunal's decision and reason for the decision on each of the items in the schedule of cost is set out in the Scott schedule of cost and is annexed to this decision. The Tribunal would have derived some assistance from a witness statement by the Applicant's solicitor setting out the details behind the items of work, which would have been able to provide further information.

Annexe copy to the decision

Summary	***Total cost claimed by the Applicant***	***Amount determined by the Tribunal as reasonable and payable***
	£42,271.10	*£18,727.80*

The issue raised by the Respondent concerning the applicant acting frivolously and vexatiously

55. The Respondent in his skeleton argument made an application under paragraph **10(2) of Schedule 12 to CLRA 2002.**

It was submitted by the Respondent that-: *"Owing to the detrimental effect that an excessive costs application has had on the RTM in this case and the injustice caused to the Respondent in the event that the Tribunal determines that costs of £42,000 are wholly unreasonable and significantly reduces them the Respondent submitted that that Applicant's conduct has been unreasonable and vexatious and that the Tribunal uses its discretion to award costs under para 10(2) of Schedule 12 to CHLRA 2002. Given the above policy consideration and as a point of principle to preserve RTM as a low cost non fault based application the Tribunal is asked to take a dim view of such conduct. In this case the Respondent has been scared to continue with the proceedings and this cannot have been the intention of Parliament."*

56. The Tribunal noted that the implications of section 10 (2) of CLARA 2002 is that the Applicant in bring this matter has acted in a manner which is frivolous and vexatious. This in the Tribunal's view implies some improper conduct on behalf the Applicant, the Tribunal do not accept that the Applicant acted improperly in the conduct of these proceedings.

57. The Tribunal noted that the purpose of section 88 (3) of CLARA was that in circumstances where there is a dispute concerning the reasonableness of the costs, the matter could be referred to the Tribunal for a reasoned determination.

The Tribunal considers that where this results in a deduction, however substantial, this should not of itself be open to the interpretation of frivolous or vexatious behaviour on the Cost Applicant's behalf.

The Tribunal on the information before it finds no grounds for determining that the Applicant in these proceedings has acted frivolously or vexatiously.

The Scott schedule in this matter shall stand as the Applicant's schedule of cost found payable by the Respondent.

Ms MW Daley (Chair) **Dated 25 March 2014**

Appendix of relevant legislation

S88 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 a leasehold valuation 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 a leasehold valuation tribunal.

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.