



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

**Case reference** : **LON/00BK/LSC/2020/0135**

**HMCTS code (paper, video, audio)** : **CVPPRMOTE**

**Property** : **25-28 North Audley Street, London W1K6WB**

**Applicants** : **25-28 North Audley Street Management Ltd**

**Representative** : **JB Leitch Limited**

**Respondent** : **Various Leaseholders**

**Representative** : **Mr Ian Rees Phillips**

**Type of Application** : **For the determination of the liability to pay service charges under section 27aA of the landlord and tenant Act 1985**

**Tribunal members** : **Mr DI Jagger MRICS  
Mrs A Hamilton Farley**

**Date of Decision** : **25th January 2021**

---

## DECISION ON COSTS

---

The Tribunal rejects the Respondent's application under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and makes no order as to costs.

### **Reasons**

On 27<sup>th</sup> October 2020 the Tribunal determined that all the service charges claimed the Applicants were payable. The Applicants have since, on 25<sup>th</sup> November 2020, applied for an order that the Respondents pay their costs of the proceedings under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Within this application was a schedule of costs totalling £14,708.88 plus £816.24. In this statement of costs the applicant listed costs in connection with the hearing together with the cost of drafting the application.

The Tribunal invited the Respondents to make written representations in response, which they did on 15<sup>th</sup> January 2021.

It now falls on us to consider the costs application in the light of the written submissions before us. We do this in the context of the circumstances of the original decision.

### **The relevant law**

The relevant parts of rule 13 state:

- (1) The Tribunal may make an order in respect of costs only—
  - (a) ...
  - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
    - (iii) a leasehold case; ...
4. The Upper Tribunal considered rule 13(1)(b) in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 0290 (LC). They quoted with approval the following definition from *Ridehalgh v Horsefield* [1994] Ch 205 given by Sir Thomas Bingham MR at 232E-G:

"Unreasonable" ... means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal

representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable.

The Upper Tribunal in *Willow Court* went on to say:

24. ... An assessment of whether behaviour is unreasonable requires a value judgment on which views might differ but the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level. We see no reason to depart from the guidance given in *Ridehalgh* at 232E, despite the slightly different context. “Unreasonable” conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham’s “acid test”: is there a reasonable explanation for the conduct complained of?

26. We ... consider that tribunals ought not to be over-zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities in the preparatory stages of proceedings. As the three appeals illustrate, these cases are often fraught and emotional; typically those who find themselves before the FTT are inexperienced in formal dispute resolution; professional assistance is often available only at disproportionate expense. ...

### **The Decision**

The Respondent’s submissions essentially list the weaknesses in the Applicants’ case and in the way they conducted it, both those apparent before the hearing and those pointed out by the Tribunal.

The Tribunal agrees that the Applicants’ case was weak and that this was seriously exacerbated by their failure to engage with the Applicant prior to the hearing. The course adopted by the Respondents may certainly be regarded as optimistic and reflects poorly on their judgment. However, that is insufficient to be regarded as unreasonable within the definition referred to in *Willow Court*.

At a second stage it is essential for the tribunal to consider whether, in the light of any unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not: it is only if it decides that it should make an order that the third stage is reached when the question is what the terms of that order should be.

It seems to the Tribunal that therefore the bar to unreasonableness is set quite high in that what it amounts to unreasonableness must be quite significant and of a serious consequence. This being so the Tribunal must now consider the conduct of the parties in this dispute given the nature of the judicial guidance outlined above.

The Applicant maintains that the Respondent was unreasonable in the conduct of the service charge dispute, both before and during the hearing. It is alleged the Respondents defence was spurious and the fact that they engaged the services of a solicitor and barrister for the hearing confirms they should be judged by the standards of a reasonable person in receipt of professional advice. The Tribunal was not satisfied that there was sufficient evidence that there had been unreasonable conduct on the part of the respondent.

Taking into account all that the parties have said about the case and the actions of the parties involved, the Tribunal cannot find evidence to match the high bar of unreasonable conduct set out above. The Tribunal was therefore not satisfied that stage one of the process had been fulfilled in that it found there has been no unreasonableness for the purposes of a cost decision under Rule 13 . The conduct may have been verging on the misplaced and mistaken but it was not vexatious or such that following the legal tests the Tribunal might consider such conduct was unreasonable.

In the circumstances, the Tribunal declines to make any costs order.

However, Rule 13 does allow for the refund of Tribunal fees. Rule 13(2) states that ‘*The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.*

There is no requirement for unreasonableness in this regard. Therefore in this case the Tribunal considers it appropriate that the Respondent refund the applicants fee payment which we believe was £100.

In the circumstances the Tribunal determines that there be an order for the refund of the application fee in the sum of £100 pursuant to Rule 13(2)

**Name:** D I Jagger

**Date:** 25th January 2021