



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

**Case Reference** : **CAM/33UG/LSC/2019/0022**

**Property** : **Flats 3, 5, 6, 8 and 10 Imperial House,  
Rose Lane, Norwich NR1 1BY**

**Applicants** : **Tracy Bullen, Clive Bullen and  
Keiron Bullen**

**Respondent** : **Norwich Elite Lettings Ltd**

**Type of Application** : **Application for costs under rule  
13(1)(b) and (2) of the Tribunal  
Procedure (First Tier Tribunal)  
(Property Chamber) Rules 2013.**

**Tribunal Members** : **Tribunal Judge S Evans  
Mr R Thomas MRICS**

**Date and venue of  
Hearing** : **Paper determination**

**Date of Decision** : **21<sup>st</sup> October 2019**

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**DECISION**

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## DECISION

**In summary, the Tribunal determines that the Respondent shall pay to the Applicants within 56 days:**

- (1) Costs pursuant to s.29 of the Tribunals, Courts and Enforcement Act 2007 and rule 13(1)(b) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, in the sum of £3750 inclusive of VAT;**
- (2) The Application Fees of £500, pursuant to s.29 of the said Act and rule 13(2) of the said Rules.**

### **Introduction**

1. By its decision dated 17<sup>th</sup> September 2019 the Tribunal disallowed the Respondent's service charge demands for 2016 and 2017 and made consequential directions for the consideration of the Applicant's application for costs on the grounds of unreasonable behaviour on the part of the Respondent.
2. The Procedural History section of the decision noted that the Respondent had been debarred from defending the application, by reason that it had failed to comply with any previous directions.
3. By its decision, the Tribunal made also an order for the application fees to be paid by the Respondent.
4. The Tribunal then determined that the Applicants' case set out clearly enough the conduct relied on as unreasonable, and that there was a case to answer. It noted that, although the Respondent has been sent the Applicants' Case, it had not been sent a schedule giving a breakdown of costs sought, nor had it been provided with the opportunity to respond to the criticisms made, and to offer any explanation or mitigation, in the light of its overall decision.
5. Following paragraph 43 of the decision in *Willow Court Management Co. Ltd v Alexander* [2016] UKUT 0290 (LC), the Tribunal then made the following directions:
  - (1) The Applicants to file at the Tribunal and serve on the Respondent a schedule of their reasonable costs within 14 days of receipt of the decision, together with any further submissions (limited to 1 page of A4 paper, line spacing 1.5, minimum 11 point font);

- (2) The Respondent to file at the Tribunal and serve on the Applicants a response to the criticisms made and to offer any explanation or mitigation, in the light of the decision (limited to 2 pages of A4 paper, line spacing 1.5, minimum 11 point font) within 14 days of receipt of the documents directed in paragraph (1) above;
- (3) The Tribunal to make a summary determination of the issue on the papers.
6. On 1<sup>st</sup> October 2019 the Tribunal received the Applicant's submissions and schedule of costs by letter dated 30<sup>th</sup> September 2019. The letter stated that the same had been served on the Respondent on the day of the letter.
7. The Respondent has failed to file and serve any submissions in response.

### **Relevant law**

8. The Tribunal's power to award costs is derived from section 29 of the Tribunals, Courts and Enforcement Act 2007, which is set out in Appendix 1.
9. By section 29(3) of the said Act, the power to determine by whom and to what extent costs are to be paid, which is conferred by section 29(2), has effect subject to the Tribunal's procedural rules. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, which came into force on 1 July 2013, is also set out in Appendix 1.
10. Whenever the FTT exercises any power conferred by the 2013 Rules, or interprets those Rules, it is required by rule 3(3) to seek to give effect to the overriding objective. That rule is also set out in Appendix 1.
11. In *Willow Court Management Co. Ltd v Alexander* [2016] UKUT 0290 (LC), the Upper Tribunal considered the power under rule 13(1)(b) of the procedural rules 2013 to award costs on basis of unreasonable behaviour. A sequential staged approach was held to be necessary:
12. Unreasonable conduct is a precondition of the power to award costs for unreasonable behaviour. This first stage is application of an objective standard of conduct, not an exercise of discretion. This requires the

asking of the question, “Would a reasonable person in the position of the party have conducted themselves in the manner complained of?”. Or put another way, “Is there a reasonable explanation for the conduct complained of?”

13. In paragraph 26 of the decision, the Upper Tribunal noted the requirement in rule 3(4) for the parties to co-operate with the Tribunal generally, and to help it further the overriding objective.
14. In paragraph 28 of the decision, the Upper Tribunal noted that if there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed.
15. The second stage is the question whether, in the light of the unreasonable conduct, the Tribunal ought to make an order for costs or not. This will include consideration of the nature and seriousness of the conduct, but merits consideration of all relevant circumstances.
16. The third stage is what the terms of the order should be. This is a matter for the discretion of the Tribunal, to be exercised in accordance with rule 3, including dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated resources of the parties and of the Tribunal. Again, there will need to be consideration of the nature and seriousness of the conduct, as part of all relevant circumstances.
17. At paragraph 29 of the decision, the Upper Tribunal stated that it does not follow that an order for the payment of the whole of the party’s costs assessed on the standard basis will be appropriate in every case.

### **The Applicant’s Submissions**

18. The unreasonable conduct may be summarised as:
  - (1) Failing to comply with directions of the Tribunal;
  - (2) Failing to respond or engage with the Tribunal or the Applicants;
  - (3) Failing to respond to complaints and/or take proper steps to address the Applicants’ complaints, or engage in pre-action correspondence to resolve issues;
  - (4) Failing to provide certified accounts or documentation for the service charge years;
  - (5) Levying unreasonable service charge demands;

- (6) Persistently failing to provide any or any reasonable standard of services to the building;
- (7) Failing to provide services which it then sought to levy as part of the 2017 service charge.

### **The Tribunal's findings**

#### *Stage 1*

19. The Tribunal agrees that the Respondent has acted unreasonably in the sense outlined in paragraph 18(1) and (2) above, by failing to comply with directions of the Tribunal, and by failing to respond or engage with the Tribunal or the Applicants during these proceedings. It also agrees that the Respondent has acted unreasonably in failing to respond to pre-action correspondence. Rule 13(1)(b) is directed to unreasonable conduct in bringing, defending or conducting the *proceedings*. Matters extraneous to that do not constitute unreasonable conduct, albeit they may still be relevant to the decision at Stage 2.

#### *Stage 2*

20. The conduct of the Respondent in these proceedings is serious but not egregious.
21. The Respondent has been afforded an opportunity to tender an explanation or mitigation, as the decision of *Willow Court* recommends. It has provided none.
22. Given the surrounding circumstances of the parties' relationship, including the Respondent's failure to engage in pre-action correspondence, which would have provided an opportunity to avoid these proceedings if not narrow issues, and in the light of the Respondent's general management of the Building as we have found in our previous decision, we consider that an order should be made, applying the broad discretion to be exercised.

#### *Stage 3*

23. The matters under Stage 2 are noted as relevant.
24. The Schedule of Costs (excluding the application fees of £500) comes to £6853.95 inclusive of VAT. In *Willow Court*, the Upper Tribunal were anxious to note that in the cases before them the costs had exceeded the service charge amounts in issue. In this case, the service charges in issue were £5875. Proportionality is therefore in play.

25. The Tribunal notes that the solicitor rates in the Schedule exceed the guideline rates, and that there would appear to be duplication of work, given that all 3 Applicant's cases were essentially the same. In addition, there were high hours spent on attendance on the Applicants (7.4 hours), on documents (16.9 hours) and attendance on "others", who are not specified (1.7 hours).
26. This was not a complex case either factually or legally. It was a standard service charge dispute, albeit one very well presented by the Applicants' solicitors.
27. In all the circumstances, the Tribunal summarily assesses costs and orders the Respondent to pay within 56 days:
- (1) Costs for unreasonable conduct under s.29 of the Act and rule 13(1)(b), in the sum of £3750 inclusive of VAT;
  - (2) The Application Fees of £500 pursuant to s.29 and rule 13(2).

Judge: \_\_\_\_\_  
S J Evans

Date:  
21/10/19

#### **ANNEX – 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 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 to 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.

## **Appendix 1**

### Tribunals, Courts and Enforcement Act 2007

#### “29. Costs or expenses

- (1) The costs of and incidental to— (a) all proceedings in the First-tier Tribunal, and (b) all proceedings in the Upper Tribunal, shall be in the discretion of the Tribunal in which the proceedings take place.
- (2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.
- (3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.”

### Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

#### “3. Overriding objective and party’s obligation to cooperate with the Tribunal

- (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly. (2) Dealing with a case fairly and justly includes—
  - (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal.
  - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
  - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
  - (d) using any special expertise of the Tribunal effectively; and
  - (e) avoiding delay, so far as compatible with the proper consideration of the issues.
- (3) The Tribunal must seek to give effect to the overriding objective when it – (a) exercises any power under these Rules; or (b) interprets any rule or practice direction.



(4) Parties must– (a) help the Tribunal to further the overriding objective; and (b) cooperate with the Tribunal generally.”

Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

“13. Orders for costs, reimbursement of fees and interest on costs

(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–

(i) ...

(ii) a residential property case; or

(iii) a leasehold case...

(2) The Tribunal may make an order requiring a party to reimburse 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.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs– (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings...

(6) The Tribunal may not make an order for costs against the person (the “paying person”) without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by–

(a) Summary assessment by the Tribunal.