



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

**Case reference** : **LON/00AP/LSC/2019/0209**

**Property** : **30 Summersby Road, N6 5UH**

**Applicant** : **Mrs Dilek Farouk**

**Respondent** : **London Borough of Haringey**

**Type of application** : **Administration Charges**

**Present at hearing** : **Dr Farouk (Applicant's daughter),  
Mr Farouk (Claimant's son), Ms  
England (Counsel for the  
Respondent)**

**Tribunal Judge** : **Martyński**

**Date of hearing** : **18 March 2020**

---

**DECISION**

---

**Decision summary**

1. The Administration Charge levied by the Respondent in the sum of £2952.00 is extinguished.

**Background**

2. The Applicant, Mrs Farouk, is the long leaseholder of 30 Summersby Road. The Respondent Council is her landlord.
3. On 14 March 2019, the Council issued proceedings against Mrs Farouk in the County Court claiming Service Charges (£8799.26), interest and fixed costs.
4. Mrs Farouk filed a defence dated 25 March 2019.

5. After reviewing the case, on 3 June 2019, District Judge Swan at the County Court at Clerkenwell & Shoreditch made the following order.

Send to First-tier Tribunal (Property Chamber)

6. The claim was then transferred for administration to this tribunal. On receiving the claim, this tribunal issued directions to take the case to a final hearing. It was made clear in those directions that the tribunal would deal with the whole of the claim and so, where necessary, the Tribunal Judge who heard the case would also sit separately as a Judge of the County Court to deal with any issues falling solely within the jurisdiction of the Court.
7. Prior to the final hearing before the tribunal, the Council filed a statement of costs amounting to £3462.00 and, at the final hearing, stated that it wished to pursue a costs order in that sum.
8. The final hearing took place on 18 September 2019. By a decision dated 11 October 2019, the tribunal found that Service Charges were payable in full and the Judge member of the tribunal (sitting as a Judge of the County Court) made an order for the payment of the Service Charges and for interest and for fixed costs (in the sum of £510.00). Mrs Farouk promptly paid all the sums ordered against her.
9. The decision of 11 October made no reference at all to the Council's claim for costs.
10. By an invoice dated 12 November 2019, the Council made a demand from Mrs Farouk in the sum of £2952.00. Those costs were the costs that they had claimed at the hearing on 18 September less the costs awarded by the Judge at that hearing. The description of the charge in the invoice was: -

Legal Costs  
First Tier Tribunal Admin costs

The invoice was accompanied with a statement of Rights and Obligations.

11. In applications dated 19 November 2019, Mrs Farouk challenged the demand from the Council.

### **The lease**

12. Mrs Farouk's lease contains the following clause: -

4. (6)(c) To pay all legal costs charges expenses and fees reasonably and lawfully incurred by the Corporation in connection with the determination or recovery of any unpaid contributions by way of Rent Service Charge or Management Fee

13. There was no dispute between the parties regarding the effect of this clause. It was agreed that the Council's legal costs incurred in pursuing the Service Charge could be claimed from a leaseholder.

### **The Applicant's case**

14. The points made in Mrs Farouk's Statement of Case (and then amplified by her son and daughter in the final hearing) can be summarised as follows:
  - (a) She was willing to mediate. The Council refused mediation both when the case was in the County Court and when the case was in the Tribunal.
  - (b) She had received poor legal advice, once the tribunal had explained in its decision that she was liable to pay the full amount of the Service Charges, she paid them. Had mediation taken place, and had the Council or a mediator pointed out the relevant provisions of the lease to her, she would have settled the case at that point.
  - (c) The Judge at the hearing on 18 September 2019 was presented with the Council's claim for costs. That claim was briefly discussed at the hearing. The Judge made an award of costs based on what he had been presented with and that is the end of the matter. The Council cannot now claim these costs a second time.

### **The Respondent's case**

15. The Respondent's Statement of Case and submissions made in the hearing by Counsel, Ms England, can be summarised as follows:
  - (a) Whilst the decision dated 11 October 2019 referred to the jurisdiction to make a costs order, it made no reference to the Council's claim for costs and gave no explanation as to how the Judge had arrived at his decision to award a very limited amount of costs.
  - (b) Accordingly, the Judge must not have considered the costs claimed by the Council.
  - (c) In any event, if the court has made a decision within court proceedings, this does not preclude the landlord seeking the costs as an Administration Charge under the terms of the lease (relying on *Chaplain Ltd v Kumari* [2015] EWCA Civ 798)
  - (d) There is no estoppel or res Judicata in the Council demanding its costs after the Tribunal Judge failed to award those costs
  - (e) The lease terms give a clear contractual right to claim costs in the circumstances of this case
  - (f) The costs claimed are reasonably incurred and reasonable in amount
  - (g) The fact that the Claim Form did not specifically claim costs (beyond the £100 fixed costs on issue) was immaterial because, pursuant to s.51 Senior Courts Act 1981, there is a general right to claim costs that does not have to be pleaded.
  - (h) After the decision of 18 October 2019 was sent out to the parties, the Council had two options; first, to appeal, second; to simply demand its costs in the way that it eventually did

- (i) Ms Farouk fought the case to the end; she did not concede during the final hearing when the Council was making out its case on the terms of the lease. There is therefore no reason to be believe that Mrs Farouk would have conceded her case during or after mediation. The tribunal upheld all the Service Charges claimed. The Council cannot therefore be criticised for holding out and refusing to compromise.

### **The relevant law**

- 16. The relevant parts of Section 51 Senior Courts Act 1981 ('the 1981 Act') provide as follows: -

51 Costs in civil division of Court of Appeal, High Court and county courts.  
(1) Subject to the provisions of this or any other enactment and to rules of court, the costs of and incidental to all proceedings in—  
(a) the civil division of the Court of Appeal;  
(b) the High Court; and  
(ba)the family court;  
(c) the county court,  
shall be in the discretion of the court.

- 17. Schedule 11 to the Leasehold and Commonhold Reform Act 2002 ('the 2002 Act') contain the following provisions regarding Administration Charges: -

#### ***Liability to pay administration charges***

5(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—  
(a) the person by whom it is payable,  
(b) the person to whom it is payable,  
(c) the amount which is payable,  
(d) the date at or by which it is payable, and  
(e) the manner in which it is payable.

#### ***Limitation of administration charges: costs of proceedings***

5A(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.  
(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.  
(3) In this paragraph—  
(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and  
(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

- 18. The following cases are of relevance: -

*Chaplain Ltd v Kumari* [2015] EWCA Civ 798

This case concerned proceedings which had been issued in the County Court against a leaseholder in respect of Service Charges. The case was allocated to the Small Claims Track and the issue of Service Charges was transferred to the FTT.

In its judgment, the Court of Appeal, held as follows;

- (a) A court can award costs incurred during the time that a case was at the tribunal against a leaseholder.
- (b) A claim for costs under the lease should be given effect by the court under the court's cost rules.
- (c) The court will enforce a contractual right to costs under the terms of a lease.

*Avon Ground Rents Limited v Child* [2018] UKUT 0204 (LC)

In this case, the Upper Tribunal considered the workings of the Flexible Deployment of Judges Pilot in a situation where a case was transferred from the County Court to the tribunal and where the Tribunal Judge sat also as a Judge of the County Court in dealing with all aspects of the case.

The Tribunal, following the agreement of the parties, made an assessment and award of legal costs incurred both in the County Court and the Tribunal.

### **Decision**

- 19. Dealing first with paragraphs 2 & 3 to Part 1 of Schedule 11 to the 2002 Act. The charges (£2952) claimed by the Council are not, on any view, disproportionate to the sum that was in dispute (£8,799.26). The proceedings went all the way from the County Court to the Tribunal and led to a one-day final hearing in the Tribunal. I have been provided with a breakdown of the work done and the rates charged by the Council's legal team, and there is nothing in there to lead me to believe that the amounts are unreasonable.
- 20. Next, I have considered whether it was unreasonable for the Council to have incurred these costs in the light of the fact that they refused to mediate. I do not consider that the Council were unreasonable in their refusal to mediate. The Council were found to be entirely correct in their reading of the lease and interpretation of Mrs Farouk's liabilities. They were right not to make any concession and, had they attended mediation, they would have been expected to make concessions. They have to have regard to other Service Charge payers.
- 21. As to the argument that, had the Council attended mediation and pointed out the correct lease interpretation to Mrs Farouk, she may then simply have paid and therefore the Council's legal costs would have been lower, I reject this. There is no evidence that Mrs Farouk would have conceded at the mediation stage, she attended the final hearing and contested the case to the end. Further, as I have said above, I do not consider that the Council can be criticised for not agreeing to mediation in the first place.
- 22. Moving on to the Tribunal Judge's decision (made in the Judge's capacity of a Judge of the County Court) back in October 2019. Whilst I accept that no Estoppel or res Judicata arises from the Judge's failure to award costs, I do consider that non-award is of relevance. From the

known history of this matter we can conclude the following; (a) the costs were claimed by the Council at the hearing; (b) the Judge was therefore aware that there was a claim for costs; (c) the Judge made no order for costs other than the issue fee and fixed costs.

23. Ms English, on behalf of the Council said that, after receiving the decision, the Council had two options; (a) appeal, or; (b) do nothing. I think there was a third option. Whilst there was no right for the Council to seek a review of the decision (the Tribunal rules which allow for a review do not of course apply to the issue of County Court costs), they could have written in to the tribunal pointing out the omission to the Judge and inviting his amendment or comment.
24. The Judge must be taken to have been aware of the consequences of his costs order, those being that a failure to mention costs, or an amount of costs, means that there is no order for those costs.
25. Accordingly, I assume that the Judge had considered the request for costs over and above the issue fee and fixed costs and had decided to exercise his discretion not to award those costs. That exercise of discretion is, it seems to me, relevant when I come to consider paragraph 5A of Part 1, Schedule 11 of the 2002 Act. Paragraph 5A gives me the discretion to make whatever order I consider to be 'just and equitable'. If therefore the Judge hearing the initial case considered that only limited costs should be awarded, why would it be just and equitable for me to allow those costs via a different route?
26. Further, it seems to me that Mrs Farouk was entitled to consider that, following the decisions of the Tribunal and the Judge, and further to her payment of all sums set out in those decisions, and in the absence of an appeal or question to the Judge from the Council, the matter was at an end and she would not be called upon again in respect of the matter. Again, in those circumstances, I consider it just and reasonable to disallow these charges.
27. If therefore the reasoning in John Roman's Park had been applied in the October 2019 decision, why would it be just and equitable for me to now allow those costs via a different route?
28. In all the circumstances therefore, I extinguish Mrs Farouk's liability to pay the Administration Charges demanded in the sum of £2952.00.

### **s.20C Landlord and Tenant Act 1985**

29. Ms English confirmed at the hearing before me that the Council would not be adding its costs incurred in these applications to any Service Charge.
30. However, Mrs Farouk has made the application for an order under section 20C and therefore, although it is academic, I make the order that none of the costs incurred, or to be incurred, by the Council in

connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by Mrs Farouk.

**Deputy Regional Tribunal Judge Martyński  
20 March 2020**

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).