



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

<b>Case Reference</b>	: CHI/24UJ/PHC/2021/0002
<b>Property</b>	: 64 Church Farm Close Park Dibden Southampton Hants SO45 5TF
<b>Applicant Representative</b>	: The Berkeley Leisure Group Limited : Mrs A Musson (Tozers Solicitors LLP)
<b>Respondent</b>	: Mr Albert Allmark
<b>Type of Application</b>	: Application for costs under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013
<b>Tribunal Members</b>	: Judge C A Rai (Chairman) Mr M Woodrow MRICS (Chartered Surveyor)
<b>Date type and venue of Hearing</b>	: 27 July 2021 – on the papers
<b>Date of Decision</b>	: 29 July 2021

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**DECISION**

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1. The Tribunal dismisses the Respondent's application for Rule 13(1)(b) costs.
2. The reasons for its decision are set out below.

## **Background**

3. Following a determination by the Tribunal of an application made under Section 4 of the Mobile Homes Act 1983 (the 1983 Act) (the section 4 application) that the Respondent was not in breach of his occupation agreement, the Respondent applied for costs against the Applicant.
4. The Respondent's application was headed "Application for Unreasonable/Wasted Costs under Rule 13".
5. The Tribunal's amended directions dated 18 June 2021 stated it would consider the application as an application for costs under rule 13(1)(b) unless the Respondent supplied the Tribunal with a statement confirming he wished to apply for a wasted costs order (which he did not). Both parties were referred to the guidance provided by the Upper Tribunal in the case of **Willow Court Management Company (1985) Ltd v Alexander [2016 UKUT 290 (LC)]** (Willow Court).
6. This decision was made on the papers. The documents to which the Tribunal was referred were contained in a single agreed Hearing Bundle comprising 31 pages. The Tribunal decision which determined the section 4 application is dated 4 May 2021.

## **The parties' submissions**

7. The Respondent stated that the Applicant brought an unreasonable case against him which had no merit (ground 1).
8. The Applicant had told the Respondent that it had received a complaint from another occupier of Church Farm Close Park (the Park) about him parking more than one vehicle on the Park. It had corresponded with the Respondent over a long period of time. It said that it had endeavoured to resolve the complaint. Although the Respondent consistently maintained that he had rights to park a second vehicle on the Park, the Applicant suggested that he had not disclosed any evidence about how he claimed to have acquired those rights until after it had made the section 4 application.
9. The parties were unable to reach any agreement or compromise about the Respondent parking two cars on the Park. The Applicant was unwilling to rely upon an offer from another occupier for the Respondent to use her parking space as a practical solution. It had stated that it was reasonable for it to reject this offer as to do otherwise might be interpreted as it exercising "discretion" in its interpretation of the park rules.
10. The Respondent suggested that the Applicant did not understand its own contractual obligations and either had not retained information regarding his rights, or if it had that information, had ignored it.

11. His allegations were tested by cross examination of both the Applicant and his witnesses during the original hearing, but the Tribunal discovered no novel facts. It decided the section 4 application in the Respondent's favour because it preferred the evidence put forward by him and his witnesses.
12. The Applicant submitted that the decision does not equate to a finding that the Applicant either ignored the written agreement or the legislation.
13. Although the Respondent referred specifically to Willow Court in the grounds of his application, he did not explain the relevance of that reference (grounds 2 & 3) or how it supported his application.
14. The Respondent submitted that he found it "incomprehensible" that the Applicant had gone to "such extreme lengths over an issue that was so trivial and could have been resolved amicably from day 1" (ground 4).
15. The Applicant denied that the alleged breach of the Park rules was trivial. It stated that it was obliged to act following receipt of the third party complaint. It had corresponded with the Applicant for more than a year but it had proved impossible to agree an "amicable resolution".
16. The Respondent alleged that he was threatened by the Applicant (with the assistance of their legal adviser) with Tribunal proceedings on three occasions and with the termination of his agreement, which he believed "served no value other than to intimidate me into submission" (ground 5). He also said that such threats were founded on the knowledge that he would not have equal means in terms of resources or finance (ground 6).
17. The Applicant stated that it had not taken legal advice until after the Respondent had done so and that it relied upon its experience in dealing with other alleged breaches of occupation agreements to compose the letters which had sent to the Respondent. It had sought to explain the possible consequences of a continuing breach of an agreement and the content of its letters to the Respondent was based on content used when dealing with previous incidents of breaches of an occupier's agreement. It denied that setting out the possible consequences of a breach of the Respondent's occupation agreement constituted evidence of intimidation or threatening behaviour. It stated that the Respondent had not produced any evidence to support this allegation.
18. The Respondent has quantified the amount of the costs he stated that he has incurred and provided copies of invoices from his legal adviser.

19. The Applicant has asked for the Application for costs to be dismissed for the reasons given in response to the Respondent's grounds. It also referred to the case of **Willow Court** and the guidance contained in that case on how a Tribunal should determine applications for rule 13 costs. Its submissions refer to specific paragraphs of the decision particularly those which interpret and explain unreasonable conduct.

### **The Law**

20. Rule 13(1)(b) provides the Tribunal with jurisdiction to consider a costs application on the grounds of unreasonable behaviour of a person. It may make an order in respect of costs if a party has acted unreasonably in bringing, defending or conducting proceedings in three categories of cases including residential property cases, defined in the rules as being cases, in respect of which the Tribunal has jurisdiction by or under the 1983 Act, the Housing Act 1985 or the 2004 Act.
21. The Upper Tribunal provided guidance in the case of **Willow Court** on the Tribunal's power to award costs.
22. It stated that whenever the Tribunal exercises any power conferred by the Rules or interprets those it is required by rule 3(3) to give effect to the overriding objective.
23. The overriding objective is set out below.

<p><b>Rule 3</b> <b>Overriding objective and parties' obligation to co-operate with the Tribunal</b></p> <p>(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.</p> <p>(2) Dealing with a case fairly and justly includes—</p> <p>(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;</p> <p>(b) avoiding unnecessary formality and seeking flexibility in the proceedings;</p> <p>(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;</p> <p>(d) using any special expertise of the Tribunal effectively; and</p> <p>(e) avoiding delay, so far as compatible with proper consideration of the issues.</p> <p>(3) The Tribunal must seek to give effect to the overriding objective when it—</p> <p>(a) exercises any power under these Rules; or</p> <p>(b) interprets any rule or practice direction.</p> <p>(4) Parties must—</p> <p>(a) help the Tribunal to further the overriding objective; and</p> <p>(b) co-operate with the Tribunal generally</p>
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24. In paragraph 28 of **Willow Court** the Upper Tribunal suggested an approach to decision making in claims under Rule 13(1)(b) often referred as a “three stage test”. In the later case of **Laskar v Prescott Management Company Ltd 2020 UKUT 241 (LC)** it clarified that this approach was intended to encourage tribunals to work through a logical sequence of steps. The Upper Tribunal confirmed that the only “test” is that laid down by rule 13 itself, being that the Tribunal may make an order if it satisfied that a person has acted unreasonably which in this case would require the Tribunal find that the Applicant had acted unreasonably in bringing, (defending or conducting) the proceedings.

### **Reasons for the Decision**

25. The Tribunal has considered the submissions of both parties carefully.
26. In **Willow Court**, the Upper Tribunal considered in some detail what might constitute unreasonable behaviour. It relied upon the definition in **Ridehalgh v Horsefield [1944] CH 205** which defines it as an expression aptly describing conduct “which is vexatious designed to harass the other side rather than advance the resolution of the case ....”. It also suggested that the Tribunal should consider if the alleged unreasonable behaviour was capable of a reasonable explanation.
27. The conduct of the Applicant of which the Respondent has complained all occurred prior to it making the section 4 application. The Tribunal has found none of that conduct is evidence of anything more than a desire, on the part of the Applicant, to resolve what it considered was a breach of the Respondent’s occupation agreement which had given rise to a complaint from another occupier. It does not agree with the Respondent that any of that conduct equated to either harassment or intimidation of the Respondent. The steps taken by the Applicant all appear to be based upon a wish to resolve whether or not the Applicant could park a second car within the Park without being in breach of the Park rules.
28. The grounds of the Respondent’s application refer to the Applicant’s decision to apply to this Tribunal, its interpretation of the Park rules and the alleged omission to take account of facts which he claimed, but which the Applicant denied, were presented to the Applicant before the proceedings were commenced.
29. The Respondent has not suggested that the Applicant acted unreasonably in the conduct of the proceedings.
30. The Applicant’s refusal to consider the practical solution offered by a third party occupant was rejected because it considered that was, at best, a “temporary solution”. When it was unable to reach any compromise with the Respondent it made the section 4 application. It was entitled to make those decisions.

31. Both parties are aware, and may have been advised, that this Tribunal is essentially a “no costs” jurisdiction. Parties to applications made under the 1983 Act, whether occupiers or Park homeowners, often represent themselves before this Tribunal. It is therefore unlikely that the resources of one party compared to another would ever be a material consideration or likely to influence the Tribunal in its assessment of the reasonableness of a party’s behaviour. Those grounds of the Respondent’s application are therefore rejected.
32. For all of the reasons given above the Tribunal determines that the Applicant did not act unreasonably in making the section 4 application. It therefore dismisses the Respondent’s application for costs.

**Judge C A Rai (Chairman)**

**Appeals**

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.