FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LSC/2023/0262**
Property	**:**	**Flat 3, 1B Montrell Road, London, SW2 4QD**
Applicant	**:**	**Georgia Eleanor Fleetwood Jeffrey**
Representative	**:**	**Child & Child**
Respondent	**:**	**1B Montrell Road Freehold Ltd**
Representative	**:**	**In person**
Type of application	**:**	**For an order for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**
Tribunal members	**:**	**Judge Sarah McKeown** **Mr. A Fonka** **Mr. J. Francis QPM**
Date of decision	**:**	**4 April 2024**

DECISION

Description of hearing

This has been a remote hearing (on paper) which has not been objected to by the parties. The form of hearing was P:PAPER REMOTE. The Directions provided for the application to be determined on the papers unless any party requested a hearing. No party has requested a hearing.

References to page numbers (p.) are to pages in the main bundle provided for the substantial hearing. References to (SB) are references to the supplemental bundle provided for the substantive hearing.

Decisions of the tribunal

(1) The Tribunal makes an order under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent pays the sum of £13,284.63 to the Applicant in respect of costs incurred by her relating to the issue and determination of this application. The said sum is to be paid by 4 June 2024.

(2) The Tribunal made an order pursuant to 20C of the Landlord and Tenant Act 1985 in its decision dated 15 January 2024, but for the avoidance of doubt, none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The Background

1. This was an application, brought by the Applicant leaseholder, on 4 July 2023 to determine her liability for service charges.

2. The Applicant is the Leaseholder in respect of Flat 3, 1b Montrell Road, London, SW2 4QD ("**the Property**"). The Property is a flat in a converted semi-detached house which, in total, has 5 flats ("**the Building**"). The Respondent is the Freeholder company, of which Ms. Riley is the sole director (she also holds two of the residential flats).

3. The application sought to challenge the service charges for years: 2016/17; 2017/18; 2018/19; 2019/20; 2020/21; 2021/22. It also sought to make applications pursuant to s.20C Landlord and Tenant Act 1985 (in respect of which other leaseholders were named) and para. 5A of Sch.11 Commonhold and Leasehold Reform Act 2002.

4. The application states that the Applicant was unable to provide a full list of service charge items in issue as a result of the Respondent and/or its

Managing Agent failing to provide details of the relevant expenditure – details were given in the application of attempts to obtain the information from the Respondent or its managing agent. The application also states that, in respect of the attempts to obtain the information/documentation from the Respondent, the Applicant intended to seek an order for her costs of the proceedings under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

5. On 1 August 2023 the Tribunal gave directions (p.40). It was noted that the following were the issues:

(a) Whether the service charges were payable for the service charge years 2016/17 to 2021/22;
(b) Whether the Applicant is entitled to an order for the limitation of the landlord's costs in the proceedings under s.20C and an order to reduce to extinguish the tenant's liability to pay an administration charge in respect of litigation costs, under para. 5A, Sch. 11 Commonhold and Leasehold Reform Act 2022.

6. It was noted that the Applicant's principal complaint was that the Respondent and its agents had failed to provide information requested by her solicitors in a number of letters, which had not been responded to. It was said that if this were true, it would be very poor management and would likely be reflected in the Tribunal's decision. There was no good reason for not disclosing service charge information when the alternative was requiring the lessee to go to litigation.

7. The directions provided for, among other things:

(a) Disclosure by the Respondent by 29 August 2023, to include all relevant service charge accounts and estimates for the years in dispute, together with all demands for payment and details of any payments made – para. 3 of the order;
(b) The Applicant was to send a schedule setting out the matters detailed in the order by 26 September 2023 along with a statement in support;
(c) The Respondent was to send a response to the schedule, copies of relevant invoices and a statement by 24 October 2023;
(d) The Applicant was to send any response by 7 November 2023;
(e) There was to be exchange of witness statements by 28 November 2023.

8. On 29 September 2023, the Applicant made an application to debar the Respondent from taking further part in the proceedings for failure to comply with para. 3 of the order of 1 August 2023.

9. By order of 3 October 2023 (p.47), the Respondent was to be debarred from contesting the application unless it complied with direction 3 (in the order of 1 August 2023). The order also set out the following:

(a) Two of the flats in the building are owned by Tyica Joan Riley. The registered address for the company is the address of JP Accountancy and Taxation Solutions Limited;
(b) The Respondent company only had one director, being Tyica Joan Riley;
(c) Whether the managing agents for the property were still operating was unclear;
(d) The Tribunal did not appear to have sent a copy of the proceedings to the Respondent's registered office;
(e) A copy of the application had been sent to Tyica Joan Riley at the subject property;
(f) The public record for the Respondent at Companies House records the correspondence address for Tyica Joan Riley as the address of JP Accountancy and Taxation Solutions Limited;
(g) The order was being sent to the Respondent at its registered office address of JP Accountancy and Taxation Solutions, Phoenix Industrial Estate, Rosslyn Crescent, HA1 2SP.

10. On 3 October 2023, the Tribunal issued a summons (p.49) to Ms. Riley to produce documents by 30 October 2023, being copies of all relevant service charge accounts and estimate for the years in dispute, together with all demands for payment and details of any payments made. The order stated that if the summons was not complied with, the Tribunal, under r.8(5) may refer the matter to the Upper Tribunal which may exercise the powers of enforcement under s.25 Tribunals Courts and Enforcement Act 2007 and that the Upper Tribunal may find the Respondent to be guilty of contempt of court. The order provided that the Respondent had the right to apply to vary or set aside the summons, but that any such application had to be received by the Tribunal officer by 30 October 2023.

11. On 30 October 2023, the Respondent, through solicitors who were then acting for it, made an application for a 14-day extension to comply with the order of 4 October 2023 (i.e. an extension of time until 13 November 2023). On 8 November 2023 (SB85), the Applicant's solicitor filed a witness statement opposing this application dated 30 October 2023 (p.35).

12. By order of 10 November 2023 (p.53) the deadlines in the order of 3 October 2023 and the Summons of the same date were extended to 3pm 13 November 2023, and the matter was then to be reviewed by a Tribunal Judge. The order also stated that the main issue was the Respondent's failure to provide the Applicant with information regarding the service charges, that the

best outcome was for that to be provided, and it was to be expected that the Respondent's solicitors could identify the information required and provide it.

13. On 13 November 2023 Ms. Riley emailed the Tribunal in respect of the failure to comply with the Tribunal's orders which, among other things, asked for a further 7-14 days to provide the documents/information. She referred to being unwell and provided a "Statement of Fitness for Work" dated 2 November 2023 which referred to the same condition as is mentioned in the letter of 14 October 2023 (see below).

14. By order of 21 November 2023 (p.55) the Tribunal ordered that Respondent's application for further time to comply with the Tribunal's orders was refused, that the Respondent remained under an obligation to produce the documents as per the Tribunal's order and that the hearing scheduled for 11 January 2024 would proceed.

15. The Tribunal received confirmation from the Respondent's solicitors on 14 December 2023 (SB58) that they were no longer acting for it.

16. On 15 December 2023 (SB70), Ms. Riley emailed the Tribunal asking, among other things, that any debarring order be lifted and that she be allowed to defend the case. She asked for an extension to 23 December 2023 to instruct a solicitor and send the service charge documents, including witness statements. It was said that the managing agents had obtained the documents from the conveyancing file to send to the Tribunal. In that email, Ms. Riley said that she would be attending the hearing and that she would be sending a medical certificate. The Tribunal was provided with a further "Statement of Fitness for Work" in similar terms to that dated 13 November 2023.

17. On 19 December 2023, the Tribunal wrote to Ms. Riley and the Applicant's solicitors, stating, among other things, that applications for formal orders should be made using the Tribunal form "Order 1" and not by informal email.

18. On 22 December 2023 (SB54), the Applicant made an application for summary determination that nothing was payable by the Applicant as there was no evidence of the relevant costs pursuant to rule 9 of the 2013 rules, and relied on r.9(3)(a) and r.9(7). It was said that the order of 3 October 2023 had debarred the Respondent.

19. By order of 2 January 2024 (SB56), the Tribunal ordered that no further orders were being made and that the Respondent remained under an obligation to produce the documents as per the Tribunal's previous order and that the hearing would proceed. The Judge who made the order had read the Applicant's application dated 22 December 2023 and the email from Ms. Riley dated 15 December 2023. The order made clear that, in the absence of the production of relevant documents, the Tribunal had the power to summarily determine all issues against the Respondent.

20. On 2 January 2024, Ms. Riley emailed the Tribunal stating, among other things, that she was in the process of complying.

21. On the same day, Ms. Riley telephoned the Tribunal and said that she was not well and would send a medical certificate. At 14:34 she sent an email asking for an adjournment stating, among other things, that she had been unwell and was unable to take part in the hearing. She also stated that she had been unable to send the documents and witness statements due to her illness. She asked to be allowed an opportunity to provide the documents and be allowed to defend the proceedings (and to have any debarring order lifted). She enclosed medical evidence, but the Tribunal was aware from a previous email from her that she did not want any medical information disclosed to the Applicant and so the Tribunal did not look at the medical information at this stage (the Tribunal did subsequently look at the information, as set out below, and they were the medical certificates dated 2 November 2023 and 18 December 2023). At 15:37 she sent to the Tribunal further medical evidence, which the Tribunal did not look at, at that time, for the same reason. Ms. Riley was informed that the Tribunal would consider her application at the listed hearing. The Tribunal did, during the course of the hearing, look at the document provided, which was a Statement of Fitness for Work dated 10 January 2024.

22. The hearing took place (remotely) on 11 January 2024. The Applicant was represented by Mr. Hayden-Cook, of Counsel (who had provided a Skeleton Argument in advance of the hearing). The Applicant was also in attendance, as was her solicitor. The Respondent did not attend, but Mr. Walker, of Counsel, did attend at the hearing to represent it, but his role was limited to asking for an adjournment (and seeking relief from sanctions in relation to any bar on the Respondent taking part in the proceedings).

23. As set out in the substantive decision dated 25 January 2024, Mr. Walker made an application, on behalf of the Respondent, to adjourn the hearing and an application for relief from sanctions, to "lift" any debarring order to which the Respondent was subject. During the course of the hearing, reference was made to medical evidence relating to the Respondent. For the reasons set out in the decision of 15 January 2024, the Tribunal found that the Respondent was debarred, it refused to lift the debarment and refused to adjourn the hearing.

24. The hearing then proceeded, in the absence of Mr. Walker. After the hearing (one 15 January 2024) the Tribunal issued its decision on the substantive application, which was, in summary:

(a) 2016/17 – the sum of £1,657.50 (service charges of £1,592.50 plus administration charges of £65) is not payable;

(b) 2017/18 – the sum of £3,947.20 (service charges of £3882.20 plus administration charges of £65) is not payable;

(c) 2018/19 – the sum of £2,457 (service charges of £2,392 plus administration charges of £65) is not payable;

(d) 2019/20 – the sum of £3,604.50 for service charges is not payable;

(e) 2020/21 – the sum of £10,390 for service charges is not payable;

(f) 2021/22 – there are no service charges due.

25. The Tribunal also made orders pursuant to s.20C Landlord and Tenant Act 1985 and para. 5A, Sch. 11 Commonhold and Leasehold Reform Act 2002.

26. At the hearing on 11 January 2024, the Applicant made an oral application for costs under 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("The Rules") (the application had been referred to in the original application).

27. On 15 January 2024, the Tribunal issued directions as to the hearing of the application for costs, stating that the application was to be determined without a hearing and on the basis of the written submissions from the parties, but that any party may make a request to the tribunal that a hearing should be held or the tribunal may decide that a hearing is necessary for a fair determination of the application, such request by 5 February 2024.

28. The order also provided as follows:

29. By 5 February 2024, the Applicant was to provide a statement setting out:

(a) The reasons why it is said that the respondent has acted unreasonably in bringing, defending or conducting proceedings and why this behaviour is sufficient to invoke the rule, dealing with the issues identified in the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC), with particular reference to the three stages that the tribunal will need to go through, before making an order under rule 13;

(b) Any further legal submissions;

(c) Full details of the costs being sought.

30. The Respondent was to respond by 26 February 2024, setting out:

(a) The reasons for opposing the application, with any legal submissions;

(b) Any challenge to the amount of the costs being claimed, with full reasons for such challenge and any alternative costs;

(c) Details of any relevant documentation relied on with copies attached.

31. The Applicant was given permission to respond by 11 March 2024.

Applicant's submissions

32. The Applicant's submissions, received on 5 February 2024 are, in summary, as follows:

33. First, that the proceedings would have been unnecessary but for the Respondent's "persistent and serious refusal to furnish service charge information" and that the Respondent's conduct had been unreasonable. It is said that the Applicant had tried for over a year (through her solicitors) to obtain the missing service charge information from the Respondent and/or its managing agent. Paragraph 7 of the submissions details the correspondence in this regard. Paragraph 8 summarises the managing agent's response.

34. It is also said that the Applicant wished to sell the premises, as so needed to resolve the issue of service charge liability. This is why she brought the application.

35. Reference is made to the order of 1 August 2023 and the order for preliminary disclosure, the Respondent's failure to comply, the order of 3 October 2023 (referring to debarring), the summons of the same date. The submissions go on to detail the request for an extension of time, the order of 10 November 2023, the order of 21 November 2023, the Respondent's email of 15 December 2023, the order of 2 January 2014, the request for an adjournment made by the Respondent (on or about 10 January 2024).

36. It is said that no reasonable party would have acted in the way in which the Respondent acted:

(a) The proceedings were necessitated by the Respondent's "persistent and wholesale failure to furnish" the service charge information;
(b) The Respondent was given warning of the proceedings in a letter dated 11 January 2023, email of 30 January 2023;
(c) There is a direct connection between the failures of the Respondent and the making of the application;
(d) The Respondent continued to withhold service charge information during the proceedings, in breach of the Tribunal's orders. This is despite the fact that the Tribunal was told that the managing

agents had obtained the documents (email of 15 December 2023);

(e) The Respondent made numerous attempts to stall the proceedings, making applications to extend time/for relief, which were either dismissed or failed to result in compliance. These applications resulted in the Applicant incurring further costs. It is said that even at the final hearing, the application for an adjournment/relief was made without notice to the Applicant and the Respondent sought to rely on medical evidence which had not been provided to the Applicant and that the application was an attempt to re-argue a previous application.

37. It is said that the Tribunal should exercise its discretion to make a costs order as:

(a) The Respondent's conduct was wilful and persistent;
(b) The Respondent had committed a summary offence specified in s.25 Landlord and Tenant Act 1985 and failed to comply with the summons;
(c) The Respondent's conduct had a fundamental effect on the proceedings – depriving the Applicant of an opportunity to settle her service charge liability without the need for the Tribunal's involvement;
(d) The Respondent has had the benefit of legal advice.

38. It is said that the Respondent should pay the costs of the entire proceedings on the indemnity basis.

39. The Applicant attached:

(a) Letter from the Applicant's solicitors dated 24 November 2021;
(b) A time ledger;
(c) An invoice dated 29 September 2022 for £2,838;
(d) An invoice dated 17 March 2022 for £1,632;
(e) An invoice dated 26 June 2023 for £1,200;
(f) An invoice dated 15 January 2024 for £3,00;
(g) An invoice dated 9 October 2023 for £450;
(h) An invoice dated 29 June 2022 for £1,200;
(i) An invoice dated 30 May 2023 for £1,446.

Respondent's submissions

40. The Respondent filed submissions in response on 27 February 2024. The submissions were, in summary, as follows:

41. The Respondent employed managing agents to run the block. It is said that there was no prior indication to the Respondents or Ms. Riley that a breakdown of the service charges had not been supplied to the Applicants. Ms. Riley found out on 23 October 2023 of the Applicant's complaint and Ms. Riley asked her solicitors to get a breakdown from the agents. They were not provided and when Ms. Riley discovered this, she also found out that the solicitors had not notified her of this. She dis-instructed her solicitors and emailed the Tribunal for further time, and telephone the agents to ask them for the documents; they provided an excuse. She continued to telephone them but got further excuses. She was "handicapped" by restricted mobility arising out of an operation for a serious medical condition in October 2023. She states that the non-compliance was not her fault and is not "unreasonable" conduct.

42. The Respondent attached:

(a) "Schedule to Respondent's Submissions on Costs";
(b) "Further Schedule of the Respondent's Submissions on Costs";
(c) An email dated 13 November 2023 from the Respondent to Tribunal (but which appears to have been intended for the managing agent) asking for the service charge documents;
(d) Forwarded emails from the managing agents to the Respondent on 16 April 2021;
(e) An email from the managing agent to the Respondent dated 2 January 2024;
(f) An email from the Respondent to the managing agents dated 9 January 2024 asking if they have sent the accounts documents;
(g) An email from the Respondent to JP Accountancy dated 9 January 2024 asking if they have sent the accounts documents;
(h) A chasing email to both of the same date;
(i) An email from the Respondent to the managing agents and JP Accountancy dated 27 December 2023 asking for the service charge documents;
(j) An email from the Respondent to the managing agent asking for the service charge documents;

Applicant's response

43. The Applicant provided a "schedule" as part of its response, summarising the costs sought. The Tribunal only considers and assesses costs that were claimed as part of its original costs' submissions (and this is dealt with further

below). The Tribunal takes account of the Applicant's response only and so far as it makes response to the Respondent's submissions on matters that were already in issue.

44. The Applicant's response is, in summary, as follows:

45. It casts doubt on the Respondent's assertion that she only found out about the requests for service charge breakdowns on 23 October 2023 as the Respondent was informed of this by the Applicant's letter dated 6 June 2022.

46. It is said that the Respondent must take responsibility for the conduct of its agents. If those acting for the Respondent have let her down, it may have contractual routes to indemnify itself against any costs bill. It would not be fair for the Applicant to "foot the bill" when she has no other means to recover the costs.

47. Further, it is submitted that the actions of the Respondent (and those acting for it) "forced" the Applicant into spending money and effort to establish her service charge liability and that the Respondent has still not provided a reasonable explanation for its conduct.

Law

48. In the Residential Property Tribunal, costs do not follow the event. Rule 13(1)(b) provides that they are only payable by one party if they have acted unreasonably in bringing, defending or conducting proceedings.

49. Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, provides:

> **Orders for costs, reimbursement of fees and interest on costs**
> **13.**—(1) The Tribunal may make an order in respect of costs only—
> (a)under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
> (b)if a person has acted unreasonably in bringing, defending or conducting proceedings in—
> (i)an agricultural land and drainage case,
> (ii)a residential property case, or
> (iii)a leasehold case; or
> (c)in a land registration case.
> (2) 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.
> (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 but must be made within 28 days after the date on which the Tribunal sends—
(a)a decision notice recording the decision which finally disposes of all issues in the proceedings; or
(b)notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a 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;
(b)agreement of a specified sum by the paying person and the person entitled to receive the costs (the "receiving person");
(c)detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.
(8) The Civil Procedure Rules 1998, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 199 shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.
(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

50. The case of *Ridehalgh v Horsefield* [1994] Ch 205 provided guidance as to the term 'unreasonable' as set out in Rule 13. Thomas Bingham MR at [20] said:-

> "Unreasonable" also 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 is not unreasonable".

51. The Upper Tribunal have given guidance on the approach to take to claim for costs under rule 13 in *Willow Court Management v Alexander* [2016] UKUT 0290 (LC) that is to say cases of alleged unreasonable conduct in "bringing, defending or conducting proceedings" which is the essence of the application in this case.

52. In that case, the Upper Tribunal adopted the guidance of the term 'unreasonable' as set out in *Ridehalgh v Horsefield*.

53. At paragraph 24 of Willow Court, the Upper Tribunal said "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 in *Ridehalgh v Horsefield* 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 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?"

54. At paragraph 25 it is said:

> "For a professional advocate to be unprepared may be unreasonable (or worse) but for a lay person to be unfamiliar with the substantive law or with tribunal procedure, to fail properly to appreciate the strengths or weaknesses of their own or their opponent's case, to lack skill in presentation, or to perform poorly in the tribunal room, should not be treated as unreasonable".

55. At paragraph 26, the Upper Tribunal went on to say:

> "We also 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. It is the responsibility of tribunals to ensure that proceedings are dealt with fairly and justly, which requires that they be dealt with in ways proportionate to the importance of the case (which will critically include the sums involved) and the resources of the parties. Rule 3(4) entitles the FTT to require that the parties cooperate with the tribunal generally and help it to further that overriding objective (which will almost invariably require that they cooperate with each other in preparing the case for hearing). Tribunals should therefore use their case management powers actively to encourage preparedness and cooperation and to discourage obstruction, pettiness and gamesmanship."

56. It was said at paragraph 28:

> "*At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. 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. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the 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 a third stage is reached when the question is what the terms of that order should be.*"

57. The absence of legal advice is relevant at the first stage of the inquiry (paragraph 32) and, to a lesser extent, the second and third stages (paragraph 33). At paragraph 34, the Upper Tribunal referred to *Cancino v Sec. of State for the Home Dept* [2015] UKFTT 00059 (IAC) which concerned a corresponding cost rule in the Immigration and Asylum Chamber.

58. At paragraph 43 of Willow Court, the Upper Tribunal emphasised that rule 13(1)(b) applications "*… should not be regarded as routine, should not be abused to discourage access to the tribunal and should not be allowed to become major disputes in their own right*".

59. In *Willow Court*, the Upper Tribunal held expressly that a party does not have to show "causation"; thus, a party would not have to establish a causal nexus between the costs incurred and the behaviour to be sanctioned.

60. In considering whether to make an order the Tribunal must seek to give effect to the overriding objective (Rule 3) and ensure that cases are dealt with fairly and justly.

61. The Tribunal proposes to apply the three-stage procedure. The Tribunal must first decide if there has been unreasonable conduct. If this is made out, it must then decide whether to exercise its discretion and make an order for costs in the light of that conduct. The third and final stage is to decide the terms of the order. The second and third stages both involve the exercise of judicial discretion, having regard to all relevant circumstances. Given the requirements of the three stages, rule 13 applications are fact sensitive.

62. Rule 13(1)(b) provides that the amount of costs may be assessed summarily by the Tribunal.

The Tribunal's decisions

63. The application for a Rule 13(1)(b) costs order is allowed. The Tribunal's reasons are set out below.

Unreasonable behaviour

64. The threshold for making a rule 13(1)(b) costs order is a high one. As stated at [24] of *Willow Court* "… the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level".

65. The question, as set out at [24] of *Willow Court*, is whether a reasonable person would have conducted themselves in the manner complained of or is there a reasonable explanation for the conduct complained of?

66. The Tribunal finds that there has been unreasonable conduct on the part of the Respondent: a reasonable person would not have conducted themselves in the manner of the Respondent; there has been no reasonable explanation for the conduct of the Respondent:

67. The Applicant made many attempts to obtain the necessary service charge information before bringing this application:

(a) Letter to the managing agent of 25 April 2022 – p.23;
(b) Letter to the Respondent (sent c/o JP Accountancy and Taxation Solutions) of 6 June 2022, enclosing a copy of the letter of 25 April 2022 – p.26;
(c) Letter to the managing agent dated 29 September 2022, referring to previous correspondence and emails (25 April 2022, 12 May 2022, 16 May 2022, 6 June 2022, 21 June 2022 and 1 July 2022), enclosing a Request for Summary of Relevant Costs pursuant to s.21 Landlord and Tenant Act 1985, warning it that failure to provide the information was a summary offence – p.29;
(d) Letter to the managing agent dated 11 January 2023, warning of an application to the Tribunal – p.30
(e) Email to the managing agent dated 30 January 2023, stating that an application was going to be made - (p.31).

68. As noted in the Applicant's submissions, the managing agent responded by an email on 5 May 2022 (p.32) but did not provide any information requested.

69. As was pointed out to the managing agent, it was committing a criminal offence not to respond to the request pursuant to s.21 Landlord and Tenant Act 1985.

70. The Respondent was given warning of the Applicant's intention to bring the application (letter dated 11 January 2023, email of 30 January 2023). It was then given a number of opportunities by the Tribunal to provide the information, including the issue of a summons, which was not complied with. This is despite the fact that the Tribunal was told that the managing agents had obtained the documents (email of 15 December 2023).

71. The Respondent points out that managing agents were employed to run the block, but that does not absolve the Respondent of its responsibilities. It is not the case that there was no prior indication to the Respondent or Ms. Riley that a breakdown of the service charges had not been supplied to the Applicants, as the Respondent was informed by letter of 6 June 2022 (which enclosed a copy of the letter of 25 April 2022). The Respondent was then on notice of the need to ensure compliance. Further, the orders of the Tribunal and the Summons made it perfectly clear that the information had not been provided, and, from the correspondence/applications from the Respondent/Ms. Riley to the Tribunal, it was clear that the information had not been provided.

72. The Respondent was given warning of the implications of the failure to provide the disclosure by the order of the Tribunal dated 1 August 2023. It was on notice of the failure to comply as a result of the application to debar made by the Applicant and the Tribunal's order dated 3 October 2023. A copy

of that order was sent to the Respondent at its registered office address of JP Accountancy and Taxation Solutions, Phoenix Industrial Estate, Rosslyn Crescent, HA1 2SP. In addition, the summons of 3 October 2023 was directed to Ms. Riley directly.

73. As at 30 October 2023, the Respondent had solicitors who were acting for it, as it was the solicitors who made an application for an extension of time. They did not notify the Tribunal that they were no longer acting for the Applicant until 14 December 2023.

74. The Respondent was given a further opportunity to comply by the order of 10 November 2023. The order explicitly provided that the main issue was the Respondent's failure to provide the Applicant with information regarding the service charges, that the best outcome was for that to be provided, and it was to be expected that the Respondent's solicitors could identify the information required and provide it.

75. The order of 21 November 2023 made clear that the Respondent remained under an obligation to produce the documents as per the Tribunal's order and that the hearing scheduled for 11 January 2024 would proceed. The order of 2 January 2024 reiterated this. That order made clear that, in the absence of the production of relevant documents, the Tribunal had the power to summarily determine all issues against the Respondent.

76. The email from Ms. Riley to the Tribunal on 15 December 2023 stated that the managing agents had obtained the documents from the conveyancing file to send to the Tribunal. Her email to the Tribunal dated 2 January 2024 stated that she was in the process of complying. Despite this, the documents were not provided to the Tribunal and as at the date of the hearing, the Respondent was still asking for further time to comply.

77. There is no reasonable explanation for this conduct. The Tribunal has had regard to the fact that the Respondent has been, at times, acting in person, but this is not a case of it being "unfamiliar" with the law or procedures, or failing to appreciate "the strengths or weaknesses of their own or their opponent's case".

78. The Respondent itself (and Ms. Riley) was given ample time to comply with the disclosure requirements. The reliance placed by the Respondent on agents therefore does not explain the failures.

Whether to exercise its discretion?

79. The Tribunal finds that it is reasonable to make a costs order. It is recognised that unreasonable conduct on its own does not necessarily justify the making of a costs order, and the Tribunal has borne in mind the overriding objective in Rule 3, to deal with cases fairly and justly, which includes dealing with a 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". As the complaint about the Respondent's poor conduct and failure to disclosure documents was one that pre-dated proceedings and which ultimately led to the Applicant having to issue proceedings to determine what her service charge liability was, there is a good reason for making an award of costs.

80. The Tribunal does not see why the Applicant should not recover some, if not all (the amount of the costs order is the next third stage and is addressed below), of the expenditure incurred by her on a costly outing to the Tribunal. We accept the Applicant's submission that there is no other way to compensate the Applicant for the Respondent's unreasonable behaviour. The Respondent's position is, at least in part, that the fault lay with her managing agent and/or her solicitors. Even if this is correct, the Applicant should not have to bear the cost of those failures.

81. The Tribunal accepts the Applicant's point that the proceedings would have been unnecessary but for the Respondent's failure to provide the information as regards the service charges. In order to crystallise her service charge liability (necessary if she wanted to sell the Property), the Applicant had to resort to bringing the application before the Tribunal.

Amount of the order

82. The Tribunal is mindful that it has a discretion as to what order should be made (see *Willow Court* at [29]). The Tribunal does not assume that all the costs claimed should be paid, but it is not the case that there needs to be a direct causal link between the Respondent's unreasonable behaviour and the award made.

83. The Applicant asks for costs to be awarded on an indemnity basis. The Tribunal is not satisfied that this is one of the rare cases in which such an order should be made.

84. The Respondent's failure to disclose the service charge information gave rise to the need for the Applicant to bring this application. The Applicant was left with no choice but to issue proceedings and incur legal costs.

85. The Applicant has not provided a schedule of costs, but send, with its original costs' submissions, a "ledger" of time spent and costs charged, along with various invoices. The costs claimed (as set out in the Applicant's original submissions on costs), taken from the ledger provided, were £25,962 (this figure is exclusive of VAT – including VAT it comes to £31,154.40). It also does not include Counsel's fees of £4,750 (inclusive of VAT). The total amount that appears to be sought is therefore £35,904.40 (for the avoidance of doubt, this is the amount that appears to be sought only taking account of the documents supplied with the Applicant's original costs' submissions and

makes no allowance for costs said to have been incurred since those submissions).

86. The Applicant seeks, in its response to the Applicant, a further £5,109 in costs said to be incurred since the last bill, including the costs of dealing with consequential matters, including its Reply. This would take the total amount sought, including VAT, to £41,013.40. The Respondent has challenged the claim for these amounts, stating that the Applicant was given an opportunity to detail its claim, and she has only had an opportunity to respond to this. The Tribunal agrees with this point and so only considers the figures put forward in the Applicant's original costs' submissions. For the avoidance of doubt, the sum of £35,904.40 comes only from the documents supplied with the Applicant's original costs' submissions and makes no allowance for costs said to have been incurred since those submissions.

87. We propose to take a broad-brush approach to the assessment of the costs.

88. The Tribunal accepts the following:

(a) that the costs sought by the Applicant do not exceed the amount for which the Applicant is liable to her solicitors;
(b) the Applicant does not have to prove that the amounts, for which she is liable, have already been paid;
(c) After the original advice work, the Applicant's solicitors continued to work under the "terms of engagement" letter;
(d) The Applicant's solicitors have only worked and charged the Applicant on an hourly rate (save that the Tribunal notes the original quotation of £1,000-£1,500 given initially and the reference to a "capped fee" on the invoice of 29 June 2022);
(e) All the costs claimed relate solely to this matter.

89. The Applicant has provided the terms of engagement, in which it is said that there were three fee earners who had different charge-out rates: £295; £375; £425 per hour plus VAT. It is not unusual to have more than one fee earner working on a case, and, as stated above, the Tribunal has adopted something of a "broad-brush" approach given that it is conducting a summary determination of the costs.

90. The invoices provided with the original costs' submissions come to £12,066 (but these have to be read with the time ledger also supplied).

91. In respect of the amounts claimed, the Respondent says, in summary:

92. (1) The complaint was very straightforward, and would only require a simple application, and a small bundle, about 3 hours' work at £250 per hour. The Tribunal observes that even a straightforward complaint requires more work than this, and in this case, the matter was complicated by: the original requests made for the service charge documents and the application(s) made in the course of proceedings.

93. (2) The application by the Respondent's on 30 October 2023 would justify two hours' work, totalling £500. The Tribunal observes that such an application would require more work than this.

94. (3) The Applicant's application of 22 December 2023 would justify another £500. The Tribunal observes that such an application would require more work than this.

95. (4) The hearing on 11 January 2024 was remote, straightforward and the only issue was whether an adjournment should be granted, justifying a brief fee of £2,500 (and no attendance on the part of solicitors). The Tribunal agrees that the Respondent should not have to pay for the attendance of both Counsel and a solicitor at the hearing.

96. In relation to the time ledger, the Respondent's points, in summary, are:

(a) The solicitors was answering the phone and charging for it;
(b) Staff of a higher grade than was necessary were used on many occasions;
(c) For many telephone attendances, no reasons were given;
(d) Many "attendance" items are unexplained;
(e) There were frequent periodic "reviews" of documents/file;
(f) There should be no charge for research;
(g) Excessive time was spent drafting documents for the Tribunal;
(h) Excessive time was spent putting a bundle together;
(i) No assurance had been given that the sums were not greater than the fees the Applicant has to pay;
(j) The sums are manifestly disproportionate to the real work involved.

97. As stated above, the Tribunal is conducting a summary assessment, not a detailed assessment. It is therefore not for the Tribunal to go through the time ledger, line by line, assessing each entry. The Tribunal has, in conducting its summary assessment, considered the time ledger and has had regard to the costs that appear to be reasonable and proportionate, to assist it in assessing whether the amount it proposes to award is, overall, reasonable and proportionate.

98. The Tribunal notes that the invoices provided with the original costs' submissions come to £12,066 (but does read them with the time ledger supplied).

99. If the following charges from the ledger were allowed, this would come to £12,272.20, inclusive of VAT:

Initial work: £1,500 (£1,800 including VAT)

Further advice in February 2022: £295 x 2: £590 (£708 including VAT)

Drafting letter to the Respondent and email to Applicant (22/04/22): £737.50 with amendments of £177 and £59: £973.50 (£1,168.20 including VAT)

Work on 09/05/22, email to Respondent: £295 (£354 including VAT)

Obtaining LR doc and email on 25/04/22: £88.50 (£106.20 including VAT)

Emails to Respondent on 09/05/22: £59 (£70.80 including VAT)

Work re managing agent on 01/06/22: £265.50 (£318.60 including VAT)

Letters/email to agent on 06/06/22: £88.50 (£106.20 including VAT)

Email to client and Respondent on 17/06/22: £118 (£141.60 including VAT)

Emails on 21/06/22: £59 (£70.80 including VAT)

Work on 14/07/22 considering strategy to obtain information of £206.50, plus £85 for a template for s.21 information: £291.50 (£349.80 including VAT)

Letters to managing agent on 26/09/22(£90) and email and letter on 29/06/22 (£150): £240 (£288 including VAT)

Telephone calls to managing agent on 06/10/22: £30 (£36 including VAT)

Reviewing lease on 17/10/22: £120 (£144 including VAT)

Email to managing agent on 30/01/23: £57 (£68.40 including VAT)

Attendance on FtT application on 23/06/23: £295 (£354 including VAT)

File perusal etc on 03/07/23: £250 (£300 including VAT)

Submitting application on 04/07/23: £125 (£150 including VAT)

Emails from FtT on 27/07/23: £60 (£72 including VAT)

Work on 31/08/23 including advice re Respondent's non-compliance: £90 (£108 including VAT)

Attendance on file etc on 01/09/23: £90 (£108 including VAT)

Work with Counsel 26/09/24: £75 (£90 including VAT)

Application to bar Respondent on 28-9/09/23: £500 (£600 including VAT)

Work re FtT on 04/10/23: £250 (£300 including VAT)

Letter/consent order to Respondent on 09/10/23: £200 (£240 including VAT)

Attendance on documents on 02/11/23: £300 (£360 including VAT)

Reviewing witness statements on 07/11/23: £125 (£150 including VAT)

Collating bundle: £250 (£300 including VAT)

Some allowance for attendance on FtT in November 2023: £1,000 (inclusive of VAT)

Preparing and finalising bundle: £250 (£300 including VAT)

Some allowance for correspondence with the Tribunal in December 2023: £500 (£600 including VAT)

Email on 09/01/24 organising hearing: £100 (£120 including VAT)

Consideration of judgment from FtT; £158 (£189.60 including VAT)

Some time allowed for attendance on client and some allowance for all other works charged: £2,000 (including VAT)

Some time allowed for admin (billing etc) and additional work: £1,000 (inclusive of VAT)

100. There does have to be some allowance for attendance at the hearing on 11 January 2024 and work done by Counsel. Making allowance for this adds an additional £4,750.

101. This would come to a total of £17,022.20. This is about 47% of the costs sought. The Tribunal makes clear, again, however, that it has not conducted a detailed assessment and it has used the figures above to provide a starting point and "cross-check" for its summary assessment. The Tribunal has considered whether this is a reasonable and proportionate amount given the complexity of the application and the sums in dispute. It finds that this is rather too high, and reduces it to 37% of the sums claimed, which comes to £13,284.63 (inclusive of VAT).

102. Accordingly, we find that the costs payable by the respondent are assessed at £13,284.63.

Judge Sarah McKeown
4 April 2024

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)