FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AN/LSC/2024/0187**
Property	**:**	**Flat 3, Earl House, 464 Uxbridge Road, London W12 0NT**
Applicant	**:**	**Earl House Management Ltd**
Representative	**:**	**Mr Alex Pritchard-Jones, counsel**
Respondent	**:**	**Lydia Roganovic**
Representative	**:**	**Mr Adam Swirsky, counsel**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Tagliavini** **Mr Stephen Mason BSc FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing **Date of decision**	**:**	**10 October 2024** **6 November 2024**
Further hearing **Decision**		**20 February 2025** **4 March 2025**

DECISION

AND

DECISION ON (1) R.13 COSTS (2) S.20C (3) Permission to appeal decision dated 6 December 2025

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ('the 1985 Act') as to the amount of service charges that are payable by the Respondent in respect of the service charge years 2022/2023; 2023/2024 (estimated) and 2024/2025. Subsequently, the estimated service charges for 2024/2025 were withdrawn by the Applicant and the tribunal did not determine these.

The hearing

2. At a face-to-face hearing, the Applicant was represented by Mr Alex Pritchard-Jones of counsel at the hearing and the Respondent was represented by Mr Adam Swirsky of counsel.

The background

3. The property which is the subject of this application is a self-contained flat in a converted Victorian villa which now contains six flats on three floors, the top floor being in the roof space. The Respondent is a Director of the Applicant company as well as the leaseholder of Flat 3, Earl House, 464 Uxbridge Road, London W12 0NT ('the property').

4. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

5. The Respondent holds a long lease of the property dated 23 August 1988, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

6. At the start of the hearing the parties identified the relevant issues for determination as follows:

(i) The payability and/or reasonableness of the actual service charges for the year 2022/2023 and the estimated service charges for 2023/2024. In a Statement in Response dated 11 July 2024 the Respondent set out a large number of items she no longer disputed for 2022/2023 and 2023/2024. Consequently, the only individual items left in dispute were identified as:

(i) The reasonableness and payability of the legal fees incurred by the Applicant in its use of Browne-Jacobsen Solicitors. Whether they were subject to a long-term qualifying agreement and the lack of consultation with the Respondent lessee pursuant to s.20 of the Landlord and Tenant Act 1985.

(ii) The registration costs of the company at Companies House.

(iii) The administration charges for late payment.

(iv) The cost of the attendance of the witness at the last tribunal hearing in *LON/00AN/LSC/2022/0133,* which was settled by the parties and a Consent Order agreed and dealt with outstanding service charges up to and including 2021/2022.

(v) The validity of the demands for payment of service charges by the use of the Applicant's online 'Portal.'

7. Having heard evidence and submissions from the parties and considered all of the documents provided in the electronic bundle of 940 pages, much of which was not relevant for the purpose of this application, in light of the Respondent not seeking to pursue certain issues in dispute in this application. The bundle also included a witness statement dated 08/08/2024 from Mr Paul Chapman, a director of the Applicant company who also gave oral evidence to the tribunal.

8. The relevant clauses of the lease are set out in Clause 2, the Fourth Schedule and the Fifth Schedule. The service charge year runs from 24 June of one year to 23 June of the next. Service charges are payable in advance in two equal half yearly instalments on 24 June and 23 December. The Respondent is required to pay a 19% contribution to the service charges.

9. Having had regard to all of the documentary and oral evidence, the tribunal has made determinations on the various issues as follows.

Legal fees of Browne-Jacobsen solicitors

10. The Respondent did not seek to assert legal costs were not in principle payable, as these are made recoverable under the terms of the lease (Fifth Schedule). The Respondent sought to challenge whether these costs were the subject of a long-term agreement entered into by the Applicant with its solicitors. The Respondent asserted the Applicant had failed to produce client care letters in respect of each piece of work, for which they had been engaged by the Applicant and this failure indicated a LTQA had been entered into. The Respondent also challenged the amount of these legal costs and asserted there was a lack of transparency as to how they had been incurred.

11. The tribunal accepts the Applicant's evidence on this issue and is satisfied that these costs are not subject to a long-term qualifying agreement. The tribunal accepts the legal costs were incurred by the Applicant on an 'ad hoc,' as and when needed basis, rather than under a continuous agreement for services. Despite the Respondent's assertion that these solicitors have 'worked for' the Applicant for more than 12 months, the tribunal finds it is not unusual for a party to have their preferred solicitors to whom they repeatedly return when the need arises and does not indicate that a LTQA has been entered into.

12. In considering the reasonableness of these costs, the tribunal has also taken into account the protracted correspondence the Respondent has sent to the Applicant and its solicitors, querying a wide range of matters, the majority of which, do not appear to be in issue in this application, thereby adding to their amount. The tribunal finds the reasons for these costs have been adequately described and would not expect a detailed Schedule of Costs to be provided for each and every time the services of these legal advisors are engaged.

13. The tribunal accepts the evidence of Paul Chapman who explained to the tribunal the Applicant's reasons for choosing and continuing to use these legal advisors. The tribunal also considers the costs charged are within the range of reasonableness for the services provided by these legal advisors.

14. However, the tribunal finds the costs incurred by these solicitors should be limited to the costs incurred from the service charge year beginning 24/06/2022 in view of the Consent Order that was previously agreed between the parties, in respect of the service charges up to and including 23/6/2022.

Company House administration costs

15. The tribunal finds these costs are part of parcel of the Applicant carrying out its management and running of the building pursuant to clause 6 of the lease and are reasonable and payable by the Respondent. In this instance they relate to the sale of Flat 2 in the building and an update to the director's details at Companies House was subsequently required. Therefore, the tribunal finds the Respondent is liable to contribute towards these costs.

Late payment fees

16. The tribunal finds there is no provision in the lease that allows for late payment fees to be charged. The tribunal finds these sums do not for part of the managing agent's fees under paragraph 6 of the Fifth Schedule as submitted by the Applicant In any event, the sum of £75.00 per letter is excessive and unreasonable. Therefore the tribunal disallows this sum for all the service charges years in dispute in the current application.

Cost of witness attendance in *LON/00AN/LSC/2022/0133*

17. The Applicant claimed costs in the sum of £756.50 that were said to have been incurred in respect of the attendance by Lisa Soultana, a fellow leaseholder and director of the Applicant company, as a witness at the tribunal in the previous application.

18. The tribunal finds these costs are unreasonable in that a director of the Applicant company would be expected to attend and represent its interests, with no expectation of being remunerated either by the Applicant company or by the Respondent. The tribunal also finds it was not clearly explained how these costs had been incurred by this witness or what losses had been suffered in attending the tribunal.

19. In any event, the tribunal finds these costs were (or should have been), included in the settlement agreed between the parties in the previous application *LON/00AN/LSC/2022/0133* to which these costs related. Therefore, the tribunal determines these costs are not reasonable payable by the Respondent.

Demands by online 'Portal'

20. The tribunal determines the demands for payment of service charges are not Notices within the meaning of clause 5(4) of the lease. The tribunal accepts the submission made by the Applicant, that paragraph 2(d) of the Fourth Schedule of the lease, requires only that the Respondent be provided with a sufficient statement of account, after which she has 14 days to pay the account having received a demand for payment. The Applicant asserted and the tribunal accepts, the

Respondent accessed the demands for payment sent via the Portal, in addition to having received hard copies.

21. The tribunal determines that demands for payment have been validly made and are payable by the Respondent, subject only to any reductions that have been determined by the tribunal in this decision.

22. The tribunal was somewhat surprised by the Respondent's apparent lack of willingness to use the Portal, as a means of receiving all of the information she has repeatedly sought from the Applicant. It appeared to the tribunal that the use of the Portal was an easy and effective means of accessing information demanded by the Respondent, who accepted she had the computer skills to do so.

23. At the end of the hearing the Applicant indicated it may wish to make an application for costs pursuant to rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and produced a Schedule of Costs in support. If such an application is to be made, it should be made by way of a formal application on notice to the tribunal so that directions can be given. It can then be allocated to this tribunal for determination.

Name: Judge Tagliavini **Date:** 6 November 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).

DECISION ON

(1) APPLICANT'S APPLICATION FOR R.13 COSTS

(2) RESPONDENT'S APPLICATION FOR AN ORDER UNDER S.20C L&T 1985

(3) RESPONDENT'S APPLICATION FOR PERMISSION TO APPEAL DECISION OF 6 NOVEMBER 2024

The tribunal's summary decisions

(i) Costs under r.13 are awarded to the Applicant and payable by the Respondent within 28 days in the sum of £25,000 (including counsel's fees and VAT).

(ii) No order is made under s.20c of the Landlord and Tenant Act 1985.

(iii) The Respondent's application seeking permission to appeal dated 4 December 2024 is struck out for want of jurisdiction pursuant to r.9(2)(a) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Background

1. On 4 December 2024, the Respondent made an application seeking permission to appeal the tribunal's decision of 6 November 2024 on the following grounds:

> *2.1 There was insufficient evidence to support a finding that the legal costs incurred were incurred reasonably,*

and/or all of *no reasonable tribunal could have concluded that the legal fees charged were reasonably incurred.*

2. However, the Respondent appeared to be seeking permission to appeal the legal costs set out in the N260 Summary of Costs) on which the Applicant relied for its r.13 application for costs which the Respondent asserted in her application for Permission to Appeal *'... were disproportionate to the complexity of the litigation and the size of the claim (about £15,000 as against costs exceeding £46,738.40).*

3. In an application also dated 4 December 2024, the Respondent sought an order under s.20C of the Landlord and Tenant Act 1985 so that none of the Applicant's costs could be added to the service charges.

4. In an application dated 4 December 2024 the Applicant made an application for R.13 costs.

5. On 6 December 2024, the tribunal stayed the Respondent's application seeking Permission to Appeal and gave directions for the Applicant's application for r.13 costs and the Respondent's application for an order under s.20C of the Landlord and Tenant Act 1985. Although the Respondent also said she sought an order for R.13 costs, no formal application was made and no grounds for making the application or a Schedule of summary costs was provided to substantiate this application, which appeared simply to be added on to the Respondent's application for an order under s.20C of the Landlord and Tenant Act 1985.

6. On 20 February 2025 the tribunal determined the applications above on the further documents provided by both parties.

R.13 costs

The Applicant's case

7. In its application dated 3 December 2024 the Applicant relied on R.13(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to seek costs in the sum of £46,738.40 that it had incurred during the period April 2024 to October 2024 in respect of the tribunal proceedings. The applicant asserted the respondent had acted unreasonably in defending and conducting the substantive application *LON/00AN/LSC/01827*. In support of its application the Applicant relied on a bundle of 40 electronic pages which included a Summary Assessment of the costs sought as well as some of correspondence that typified the Respondent's approach to this litigation.

8. In written submissions the Applicant asserted the Respondent had behaved unreasonably in that she had included in her defence to the substantive application, numerous irrelevant issues and documents which were only abandoned on the morning of the oral hearing. During the preparation for the hearing the Respondent had submitted documents in a format not easily accessible by the Applicant and had

unreasonably refused to agree to the Applicant's request for a short extension of time in which to deal with the Respondent's documents, thereby forcing an application to be made to the tribunal.

9. Thereafter, the Respondent made her own requests for extension of time and further disclosure of documents. In all correspondence between the parties and the documents submitted by the Respondent, she was unnecessarily lengthy and frequently unclear on the relevance of her requests.

10. The Respondent also sought the tribunal's permission to rely on expert evidence but this was refused by the tribunal and then sought a postponement of the hearing, a request also refused by the tribunal. During the conduct of the proceedings the Respondent instructed solicitors Shemmings Hathaway to act for her in respect of proposed ADR, although they sent extensive correspondence outside of the scope of an alternative dispute resolution meeting. At the hearing of the substantive application, the Respondent was represented by counsel who informed the tribunal the Respondent was no longer seeking to pursue a number of the issues she had previously raised.

11. The Applicant stated that the Respondent should not be considered to be a litigant in person as for much of the time she had been represented by solicitors and then by counsel. In any event, her conduct fell short of what could be expected from a litigant in person due to her unreasonable demands for disclosure and unreasonable reliance on issues that were irrelevant to the substantive application for a determination of the reasonableness of service charges.

12. The Applicant relied on the test set out in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 290 (LC) and asked for an order for costs to be made against the Respondent. In its reply to the Response the Applicant also invited the tribunal to have regard to the much more recent Court of Appeal authority of *Lea v GP Illfracombe Management Co Ltd* [2024] EWCA Civ 1241, as being the most authoritative statement of the law and subtly different to Willow Court, as there is no need to add a gloss of vexatious or oppressive behaviour to the test of 'unreasonableness' which should not be defined too restrictively.

13. Therefore, the Applicant submitted that the test the tribunal should apply is:

(i) Whether a reasonable person acting reasonably would have acted in the way in issue; and

(ii) Whether there was a reasonable explanation for the conduct in issue.

14. Unreasonableness is a finding of fact, not the exercise of a discretion. The applicant submitted it had demonstrated the respondent's unreasonable behaviour and submitted that if the tribunal does make an order, it must consider quantum. As the Applicant complained about

the Respondent's conduct generally and specifically. The Respondent placed everything in issue, so the Applicant's solicitors had to consider all the service charge items. All the costs should be awarded against the Respondent; alternatively, some modest reduction should be made for the items on which the Applicant was unsuccessful.

The respondent's case – r.13 costs

15. In her Response to the application for costs, the Respondent asserted that the tribunal was required to:

    (i) Assess whether the conduct complained of is objectively 'unreasonable'.

    (ii) If the conduct meets the 'unreasonable test' threshold, the tribunal must consider whether, in the exercise of its discretion, and taking account of all relevant factors, it is appropriate to make a cost order.

    (iii) If the tribunal considered that it is appropriate to award costs the tribunal must, as a further exercise of discretion, consider the form and quantum of the costs award.

15. The Respondent also submitted that Rule 13(1)(b) should be reserved for the clearest cases and in every case it will be for the party claiming costs to satisfy the burden of demonstrating that the other party's conduct has been unreasonable. The Respondent asserted she should be treated as litigant in person (LIP) and be judged by the standards of a reasonable person who does not have legal advice. In this instance, the Respondent conducted the litigation herself as Shemmings Hathaway was only instructed in respect of potential ADR and the Respondent was only assisted by counsel at the hearing. The Respondent also submitted the Applicant had not provided reasons why it was unreasonable for the Respondent to defend the substantive application and had achieved some success.

16. The Respondent asserted the Applicant had abandoned part of its case where it had been already dealt with in an earlier application and settlement agreement. In any event the sum of costs claimed was disproportionate to the sum of service charges in dispute of £15,379.56. The Respondent submitted the time spent on a number of items was vague or unnecessary and that the Respondent had made reasonable requests for further disclosure in order to demonstrate the uncooperative nature of the Applicant.

17. The Respondent submitted the Applicant had failed to demonstrate the respondent had behaved unreasonably and the application for costs should be refused. In any event, any order for costs if made by the tribunal should be limited to £2,000.

The tribunal's reasons -r.13 costs

18. In making its determination the tribunal also took into account the Respondent's submissions in respect of her s.20C application as many of these appeared relevant to the tissue of the Applicant's application for r.13 costs.

19. The tribunal finds the Respondent conducted her defence of this application in a manner that was unreasonable and vexatious. The Respondent had previously conducted litigation in this tribunal, which had ended in a Settlement Agreement and was therefore the Respondent was familiar with the tribunal's procedures, despite being an on/off litigant in person.

20. The tribunal finds the Respondent's correspondence with the Applicant and the points she raised was often extremely and unnecessarily lengthy, repetitious and frequently irrelevant to the jurisdiction of the tribunal. This was confirmed by the Respondent's abandonment on the morning of the hearing of a number of issues she had previously raised and sought to pursue, specifically a historic leak and the resulting foul odour permeating her flat.

21. The tribunal finds that the Respondent's multiple requests for disclosure of documents were not a genuine attempt to clarify issues but were in the Respondent's own words '*intended to try and demonstrate the uncooperative nature of the Applicant.'* Therefore, taking into account the totality of the Respondent's conduct in this litigation, the tribunal finds the Respondent has behaved unreasonably and has failed to provide a reasonable explanation for acting in her conduct of her 'defence' to this application.

Quantum

22. In assessing the level of quantum, the tribunal was surprised the Applicant had thought it reasonable to incur costs of over £40,000 in the period April 2024 to October 2024 for the recovery of arrears of service charge of just over £15,000. The tribunal finds the Applicant's amount of costs claims to be manifestly excessive and unreasonable.

23. The tribunal declines the Respondent's suggestion it carries out a line by line assessment of the Applicant's Summary Schedule of Costs as (i) insufficient detail has been provided and (ii) the tribunal is not required to nor does it consider it reasonable or necessary to do so. The tribunal is surprised at the Applicant's readiness to engage solicitors to answer every enquiry made by the Respondent, when it could have declined to do so on the basis the question was (i) irrelevant and (ii) had been answered in earlier correspondence. The tribunal is no doubt that were the costs being paid directly by a private individual then such a large bill would not have been incurred so readily, particularly in a 'no costs jurisdiction.'

24. Therefore, having regard to the relatively low level of complexity of issues involved in this application and the level of expertise required to prepare the application and provide the documents required, the

tribunal considers costs in the sum of £25,00 (including counsel's fees and VAT) are reasonable in all the circumstances.

S.20C application

The Respondent's case

25. By an application Form 1 dated 4 December 2024, the Respondent made an application pursuant to s.20C of the Landlord and Tenant Act 1985. In supporting submissions, which included the 'Respondent's answer to the Applicant's response to the Respondent's application under s.20C of the Landlord and Tenant Act 1985, in which the Applicant stated:

> *The Respondent seeks an order under CPR Rule 20C for recovery of her costs on the following grounds…*

26. The Respondent then set out under numerous heads the failings of the Applicant in conducting this and previous litigations and included multiple assertions of mismanagement of the building at Earl House and ongoing issues as well as its refusal to engage in ADR.

27. The Respondent stated the relief sought in her S.20C application as:

(i) Costs payable by the Applicant to the Respondent:

The Tribunal should order the Applicant to pay the Respondent's costs incurred as a result of the Applicant's unreasonable conduct, pursuant to Rule 13(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

(ii) Dismissal of the Applicant's Costs Application:

The Applicant's costs claim should be dismissed due to their disproportionate and unreasonable conduct throughout the proceedings.

(iii) Referral to Detailed Assessment (if needed):

If costs cannot be summarily assessed, the Respondent requests that the Tribunal directs a detailed assessment of costs.

S.20C – the applicant's case

28. The Applicant objected to this application and referred again to the Respondent's late abandonment of issues she had previously raised and the increase in costs this had caused to the applicant. The Applicant

asserted the tribunal is required to consider whether it is just and equitable to make an order under s.20C and in this case, it would not be appropriate to do so as the Respondent had contested all her service charges and then conceded on all but 5 items, the most substantive of which (whether legal fees formed part of a long-term qualifying agreement), the Respondent was unsuccessful.

The tribunal's reasons

29. Unlike the Applicant, the Respondent had made no formal application for r.13 costs and did not provide any grounds for making the application for costs or any Schedule of Costs. Therefore, the tribunal considers no valid application for r.13 costs has been made by the Respondent and therefore is not required to make a decision on it.

30. The tribunal finds that in all the circumstance and the Applicant's success on the central and substantive issues, it is reasonable for the costs of this litigation to be added to service charges, in so far as they are not met by the Respondent herself through the r.13. order for costs.

31. Therefore, the tribunal finds in all the circumstance of this application, it is not just and equitable to make an order under s.20C of the Landlord and Tenant Act 1985.

Permission to appeal

32. In an application dated 4 December 2024 and supporting grounds the respondent sought to appeal the Applicant's application for costs it had set out on its N260 form. No other grounds were relied upon. In the grounds of appeal the Respondent asserted in summary that:

(i) There was insufficient evidence to support a finding that the legal costs incurred were incurred reasonably, and/or no reasonable tribunal could have concluded that all of the legal fees charged were reasonably incurred as the only evidence of fees before the Tribunal were the Legal Invoices and the Form N260.

(ii) In the alternative, no tribunal could have reasonably reached a conclusion that the fees were reasonably incurred based on the very limited evidence presented by the Applicant.

(iii) The Tribunal gave insufficient grounds to explain its decision.

The tribunal's reasons

32. The tribunal finds the Respondent has sought to appeal the legal costs set out in the N260 (Schedule of Costs) which was provided in support

of the Applicant's application for r.13 costs, an application that was initially made orally at the conclusion of the substantive application on 10 October 2024.

33. However, as the Respondent had insufficient time to prepare any response to this (informal) r.13 application for costs and the costs claimed were high, the tribunal considered it appropriate to give directions if the parties wished to pursue this matter. Therefore, the tribunal did not determine this r.13 costs application in its decision dated 6 November 2024, which the Respondent now seeks to appeal and the Respondent's application for Permission to Appeal was stayed pending this Further Decision.

34. Therefore, as the tribunal did not make a decision on r.13 costs in its decision dated 6 November 2024. there is no decision on costs made at that time, against which the Respondent now seeks to appeal and therefore the tribunal has no jurisdiction in respect of this (premature) application.

35. Therefore, the stay on the application seeking permission to appeal is lifted and the application seeking permission to appeal is struck out for want of jurisdiction pursuant to r.9(2)(a) of The Tribunal (First-tier Tribunal) (Property Chamber) Rules 2013.

Name: Judge Tagliavini **Date: 4 March 2025**

Rights of appeal (re FURTHER DECISION)

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).