



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

**Case reference** : **CAM/12UB/LBC/2023/0009**

**Property** : **20, The Eights Marina, Cambridge CB4 1ZA**

**Applicant** : **Eights Management Company Ltd**

**Respondents** : **(1) Stephen Ingram (2) Ms Xi Lin**

**Date of Application** : **8 December 2024**

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

**The Tribunal** : **Tribunal Judge S Evans**

**Date/ place of hearing** : **On paper**

**Date of decision** : **16 April 2025**

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**DECISION**

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## **DECISION**

### **1. The Tribunal dismisses the Respondents' application for costs.**

#### **Introduction**

2. By a written determination dated 24 September 2024 the Tribunal dismissed the application of Eights Management Company Ltd for a determination of breach of lease pursuant to section 168 of CLARA 2002.
3. The Respondents to the application were Stephen Ingram and Xi Lin, the Leaseholders of 20 Eights Marina, Cambridge CB4 1ZA ("the Property").
4. The Property consists of a 2 bedroom apartment in a block. The Property sits in a high quality purpose-built gated development of 39 flats.
5. By a written application dated 8 December 2024 the Respondents now seek an order for costs pursuant to Rule 13 of Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.
6. The Tribunal apologises for the delay in providing this decision, which has resulted from a backlog of cases.

#### **The determination of 24 September 2024**

7. In dismissing the application for breach of lease, the Tribunal considered the following to be of importance on the facts of this case (summary below):
  - (1) The relevant covenants here required use as a private residence, but there was no additional covenant against use as a business; nor did the covenant require use as a home, which carries imputations of permanence, personal attachment and emotional ties;
  - (2) The Lease of the Property permitted underletting of the whole for a term not exceeding 2 years. The Lease to the Respondents therefore permitted such short-term letting as was consistent with use as a private residence;
  - (3) The use of the word "private" in the covenants added little, if anything. The Tribunal disagreed with the Applicant that the word meant "not shared" or "not open to the public" or limited to only 1 household;
  - (4) The 2 paragraphs relied on by the Applicant in the Lease were not consistent, but in any event, and in so far as relevant, we preferred the Respondents' submissions that the word "single" is intended to guard against physical separation into 2 residences.

8. The key issue was therefore whether Ms Huang and Mr Ingram used the Property as their residence. In this regard:

- (1) It was common ground that Mr Ingram occupied the Property at all material times as his private residence;
- (2) As for Ms Huang, this was not a grant of a short term right to use; it was for an initial period of 6 months, and lasted longer than that. That contrasted with transient user as found in other cases. The use by Ms Huang in the relevant period did not lack the necessary character of residential use, but had a degree of permanence and intent to use the Property as a residence;
- (3) While there was an element of commerciality to the arrangement, there was no evidence that Mr Ingram did make a profit from the transaction with Ms Huang;
- (4) A circumstance in the instant case which was absent from all the other authorities cited to the Tribunal was Mr Ingram's intention to have someone in the Property as company, on account of his mental health issues. This element of intention to find companionship provided a different perspective through which his arrangement with Ms Huang needed to be seen. It seemed to the Tribunal that this factor added to the conclusion that a reasonable person would consider the use by Ms Huang of the Property to be use as a residence;
- (5) There was insufficient evidence that the Respondents had used the Property for any purpose which was a nuisance, or even tended to be a nuisance, or that they permitted a nuisance. Any such nuisance would have been caused by Ms Huang on the facts. No adoption or authorisation or permission to cause a nuisance occurred on the facts.

9. In granting the s.20C application the Tribunal held (amongst other things):

"83...the Applicant chose to pursue an historic breach which was not likely to provide a case for forfeiture. Whilst the Applicant may have wished to have some form of precedent to wave at other persons in the building who act similarly to Mr Ingram, as this very case shows (based on the authorities cited to us) each case is a question of fact and degree, and must turn on its individual circumstances.

84. We do not consider the application to have been vexatious or unreasonable, and many applications are pursued which ultimately fail. That alone is not decisive, as we have already held."

### **The Law relating to Rule 13 costs**

10. The Tribunal's power to award costs is derived from section 29 of the Tribunals, Courts and Enforcement Act 2007, which is set out in Appendix 1.

11. By section 29(3) of the said Act, the power to determine by whom and to what extent costs are to be paid, which is conferred by section 29(2), has effect subject to the Tribunal's Procedural Rules. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, which came into force on 1 July 2013, is also set out in Appendix 1.
12. Whenever the FTT exercises any power conferred by the 2013 Rules, or interprets those Rules, it is required by Rule 3(3) to seek to give effect to the overriding objective. That Rule is also set out in Appendix 1.
13. In *Willow Court Management Co. Ltd v Alexander* [2016] UKUT 0290 (LC), the Upper Tribunal considered the power under Rule 13(1)(b) of the Procedural Rules 2013 to award costs on basis of unreasonable behaviour. A sequential staged approach was held to be necessary:
14. Unreasonable conduct is a precondition of the power to award costs for unreasonable behaviour. This first stage is application of an objective standard of conduct, not an exercise of discretion. This requires the asking of the question, "Would a reasonable person in the position of the party have conducted themselves in the manner complained of?". Or put another way, "Is there a reasonable explanation for the conduct complained of?"
15. In paragraph 28 of the *Willow Court* decision, the Upper Tribunal noted that if there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. This is a value judgment.
16. The second stage is the question whether, in the light of the unreasonable conduct, the Tribunal ought to make an order for costs or not. This will include consideration of the nature and seriousness of the conduct, but merits consideration of all relevant circumstances. It includes matters such as proportionality and the conduct of parties more generally (para. 66).
17. The third stage is what the terms of the order should be. This is a matter for the discretion of the Tribunal, to be exercised in accordance with Rule 3, including dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated resources of the parties and of the Tribunal. Again, there will need to be consideration of the nature and seriousness of the conduct, as part of all relevant circumstances.
18. At paragraph 29 of the decision, the Upper Tribunal stated that it does not follow that an order for the payment of the whole of the party's costs assessed on the standard basis will be appropriate in every case.

19. The *Alexander* case was approved in the Court of Appeal decision of *Lea & Ors v GP Ilfracombe Management Company Ltd* [2024] EWCA Civ 1241 (22 October 2024), in which it was found that unreasonable conduct for the purposes of Rule 13 can include conduct which is vexatious or designed to harass, but it does not require such conduct. The CA therefore held that the UT in *Assethold Limited v Lessees of Flats 1-14 Corben Mews* [2023] UKUT 71 (LC) at para 62 had been wrong to suggest that an order for costs under rule 13(1)(b) will only be made where the paying party's behaviour has been vexatious, and designed to harass the other party rather than to advance the resolution of the case.

20. The CA further held that:

(1) Because deciding whether or not a person had “acted unreasonably” within rule 13(1)(b) was a fact-specific exercise, it was not appropriate for the court to give more general guidance as to what did or did not constitute acting “unreasonably” for the purposes of rule 13(1)(b), but a good practical rule was to ask (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;

(2) A finding that a party had acted unreasonably within rule 13(1)(b) was a finding of objective fact, rather than an exercise of discretion.

### **The parties representations**

21. On 12 November 2024 the Tribunal wrote to the parties in these terms:

*The Tribunal does not routinely make orders for costs under rule 13 and the Respondent is referred to Willow Court Management Co v Alexander [2016] UKUT 290. Should the Applicant and the Respondent pursue their respective positions, the following directions shall take effect. The Tribunal directs that:*

1. *The time for the Applicant to seek permission to appeal the Tribunal's decision is extended to 4pm on 9 December 2024.*
2. *Any application for costs under rule 13 shall be made by the Respondent **on Form Order1** by 4pm on 9 December 2024.*

22. The Applicant did not pursue any appeal.

23. On 9 December 2024 the Respondents filed an Order form 1 stating at section 7 that the Applicant had made a persistent pursuit of unsubstantiated claims, refusal to engage in ADR, and harassment following the tribunal's decision,

causing unnecessary financial burden, wasted costs and reputational harm to the respondents.

24. The Respondents' have provided representations dated 6 December 2024. These 30 paragraphs may be distilled to the following:

- (a) There was a late withdrawal (morning of hearing) by the Applicant of the allegation of breach of clause 4.4 (subletting);
- (b) The Applicant lost on all other allegations;
- (c) The Applicant's costs of £30,000 have been charged to the leaseholders through the service charges;
- (d) The Respondents protested their non-breach from the very outset, yet the Applicant pursued the application;
- (e) The Respondents made numerous attempts to resolve the matter through ADR and by their Counsel between February 2022 and August 2024, but the Applicants "ignored or declined these offers", including 3 letters Without Prejudice Save as to Costs;
- (f) No legal advice was obtained by the Applicant before proceeding with the decision to advance the case to trial;
- (g) Emotional distress has been caused to the Respondents;
- (h) Correspondence from the Applicants since the decision has been unreasonable and harassing;
- (i) The First Respondent's mental health has deteriorated;
- (j) Defamatory statements have been made;
- (k) At an EGM following the written decision, the Respondents were asked to leave the meeting while the impact of the decision was discussed;
- (l) A letter from the Applicants after the decision implies this Tribunal took pity on/sympathised with the Respondents, and a letter from the Applicant publicised the Applicant's mental health conditions.

25. On 13 December 2024 the Applicants wrote to the Tribunal to say they objected to the application for costs, and would provide a detailed objection on receipt of the "applicants {sic} detailed grounds".

26. On 18 December 2024 and 6 February 2025 the Applicant wrote to the Tribunal to state that the detailed grounds had not been submitted within the prescribed timetable.

27. On 10 April 2025 Ms Lin wrote to the Tribunal indicating the Respondents had provided everything to the Applicant.

## **Determination**

28. This application falls at the first hurdle, i.e. Stage 1 of *Alexander*. In paragraph 34 the UT held that that rule 13(1)(a) and (b) should both be reserved for the clearest cases, and that 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. In the Tribunal's determination, this is not the clearest of cases and the Respondents have not discharged that burden, for the following reasons.
29. Despite the decision of September 2024 at paragraph 84 and the directions from the Tribunal dated 12 November 2024, the Respondents have made no reference to the *Alexander* case or Stage 1 therein (or indeed any of the stages) in their written representations. It is unclear precisely what they consider to be "unreasonable behaviour". In *Alexander* at paragraph 43 the UT held:
- "...The applicant for an order should be required to identify clearly and specifically the conduct relied on as unreasonable, and if the tribunal considers that there is a case to answer (but not otherwise) the respondent should be given the opportunity to respond to the criticisms made and to offer any explanation or mitigation. A decision to dismiss such an application can be explained briefly."
30. Assuming the Respondents rely on each of the matters set out in paragraph 24 above, the Tribunal does not consider that each of them fails to permit of a reasonable explanation, on an objective analysis.

In particular:

- (1) A late withdrawal of a case, let alone an issue (such as reliance here on clause 4.4, being only one arrow in the Applicant's quiver), is not to be discouraged: see *Alexander* at paragraph 35:

"...It is important that parties in tribunal proceedings, especially unrepresented parties, should be assisted to make sensible concessions and to abandon less important points of contention or even, where appropriate, their entire claim. Such behaviour should be encouraged, not discouraged by the fear that it will be treated as an admission that the abandoned issues were unsustainable and ought never to have been raised, and as a justification for a claim for costs."

- (2) The fact that a party pursues an unmeritorious case does not lead to a conclusion that party has acted unreasonably; and this case was not hopeless. The issues were complex and required a determination of both lease construction and application of fact specific circumstances;
- (3) The Applicant was legally represented, and that is not surprising, given there was a fair deal of lease interpretation required in the case. It does not follow that because the Applicant was legally represented, its failure to succeed on its

application is somehow magnified; it only means that the conduct of the Applicant must be judged by the standards of a reasonable person who has legal advice;

- (4) Facts occurring after the written decision are irrelevant at Stage 1 to the issue whether the Applicant acted reasonably in pursuing its case to a final hearing, thereby causing costs on legal representation to be expended on the Respondents' part;
- (5) The conduct of the Applicant throughout the proceedings was not vexatious or designed to harass, the Tribunal found in the substantive decision, and affirms now;
- (6) The effect on the Respondents of emotional distress and any mental deterioration on the part of the First Respondent, whilst properly deserving of sympathy, does not mean the Applicant's conduct should be judged accordingly, unless its conduct was intentional, which this Tribunal does not find on the evidence;
- (7) The First Respondent's medical circumstances, and more particularly that he has had mental health issues, was advanced during the public hearing, and considered in the written decision of September 2024 at paragraphs 44 and 74, which has been published online;
- (8) No written offers have been exhibited by the Respondents. In any event, it would take something remarkable to make the Applicant's refusal to accept such offers unreasonable in the sense contemplated in *Alexander*.

31. In the light of the above the Tribunal does not need to consider Stages 2 and 3 of *Alexander*. The application for costs is dismissed.

**Name:** Tribunal Judge S Evans

**Date:** 16 April 2025.

### **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).

## **Appendix 1**

### Tribunals, Courts and Enforcement Act 2007

#### “29. Costs or expenses

- (1) The costs of and incidental to— (a) all proceedings in the First-tier Tribunal, and (b) all proceedings in the Upper Tribunal, shall be in the discretion of the Tribunal in which the proceedings take place.
- (2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.
- (3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.
- (4) In any proceedings mentioned in subsection (1), the relevant Tribunal may—
  - (a) disallow, or
  - (b) (as the case may be) order the legal or other representative concerned to meet,
 the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.
- (5) In subsection (4) “wasted costs” means any costs incurred by a party—
  - (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or
  - (b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.
- (6) In this section “legal or other representative”, in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf.”

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

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

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly. (2) Dealing with a case fairly and justly includes–

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal.

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with the proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it – (a) exercises any power under these Rules; or (b) interprets any Rule or practice direction.

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

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

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

(1) The Tribunal may make an order in respect of costs only–

(a)...

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in–

(i) ...

(ii) a residential property case; or

(iii) a leasehold case...

(2) The Tribunal may make an order requiring a party to reimburse any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

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

(7) 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.

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

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

(10) The amount of costs to be paid under an order under this Rule may be determined by-

(a) Summary assessment by the Tribunal.”