FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Tribunal reference	**:**	**LON/00AY/LSC/2023/0416** **LON/00AY/LSC/2024/0295**
Property	**:**	**98A, Broxholm Road, London SE27 0BT**
Applicant/Claimant	**:**	**Assethold Limited**
Representative	**:**	**Eagerstates Limited**
Respondent/Defendant	**:**	**Claire Fraser Taylor**
Representative	**:**	**HCR Legal LLP**
Tribunal members	**:**	**Judge Dutton & Mr K Ridgeway MRICS**
Date of decision	**:**	**16 April 2025**

DECISION

DECISION

The tribunal finds that the Applicant, hereinafter referred to as Assethold, has acted unreasonably in the conduct of these proceedings and that the provisions of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (Rule 13) applies and that Assethold Limited shall pay to the Respondent Claire Fraser Taylor the sum of £16,164 including VAT and disbursements assessed under the provisions of Rule 13(7) (a) such sum to be paid within 28 days.

Background

1. This application arises from a decision of the tribunal on 17 January 2025 in which we dismissed the claims of Assethold for various service charge items.

2. Assethold had been debarred from participating in these proceedings for the reasons set out in an order of Judge Cowen dated 6 November 2024 (the Order). There was a history of failures on the part of Assethold leading to the debarring order. They failed to comply with directions on more than one occasion and were warned of the potential debarring. The original debarring order was made on 23 September 2024 giving Assethold 28 days to respond and apply for it to be lifted. They were late doing so. Judge Cowen in the Order recites in detail the failings of Assethold and its representative Eagerstates. The Judge concluded that the failures by Assethold were significant and serious, warranting a debarring order being made.

3. He considered whether there was good reason to explain the default and found there was not. Indeed, he found that the reasons relied upon by Mr Gurvits, a qualified solicitor and the main player in Eagerstates Limited were "demonstrably false'.

4. It is with this background and our understanding of the case that we consider whether the Respondent, Ms Taylor has satisfied us that the provisions of Rule 13 have been reached and that an order for costs can be made against Assethold.

5. The lead authority on this matter is the Upper Tribunal case of Willow Court v Ratna [2016] UKUT 0290 (LC). At paragraph 24 the Court said this:

> *24. We do not accept these submissions. 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 given in Ridehalgh 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 in the position of the party 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?

and at paragraph 28 this:

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.

6. Directions for this matter to be determined were included in the Decision we made in January 2025. This gave Assethold until 21 February 2025 to provide any response. Perhaps consistent with the manner in which they have conducted themselves in these proceedings they did not comply.

7. We have therefore decided this matter on the basis of the papers before us, including the hearing bundle and the details of the failings of Assethold set out in the documents contained, including the Order. We have also noted the contents of two skeleton arguments, one for the CMH on 20 June 2024 and one prepared for the hearing of the matter on 28 November 2024. In addition, we have been supplied with correspondence from the solicitors for Ms Taylor showing service of relevant documents on Eagerstates for Assethold. Finally, we have been supplied with a statement of costs for summary assessment showing a total sum claimed of £26,258.40 accompanied by supporting invoices in respect of solicitors and counsel fees.

Findings

8. The failings of Assethold are clear from the Order of Judge Cowen, which has not been appealed, the circumstances set out in the skeleton arguments and the papers before us. Assethold, through Eagerstates Limited have consistently failed to comply with directions of this tribunal, notwithstanding that Mr Gurvits is a qualified solicitor and have offered no compelling reasons for their failures. This is wholly unacceptable and has put Ms Taylor to additional costs in

having to make applications in attempts to compel Assethold to comply with the orders of this tribunal. In our finding it shows contempt both for Ms Taylor and her representatives, but also for the tribunal.

9. Accordingly, we have no difficulty in finding that the first leg of the steps we must take to consider invoke the provisions of Rule 13 have been met as well as step two. In support of the second step, we refer to the attendance of Counsel at the hearing in November 2024 for the sole purpose of seeking permission to appeal Judge Cowen's order, with no instructions to engage in the hearing other than on this point.

10. We therefore move on to determine the order we should make and have noted carefully the Statement of Costs for summary assessment signed by Natalie Dee Caroline Minott and dated 22 November 2024, with supporting vouchers.

Assessment of costs

11. We bear in mind the overall objectives set out in Rule 3 and to deal with the matter fairly and justly and proportionately. In this regard we remind ourselves that the sums in dispute before us were £2,834.08.

12. Further the Upper Tribunal at paragraphs 41 onwards of the decision in Willow Court said this:

41. In this respect rule 13(1)(b) more closely resembles rule 14 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001 which permit the making of an order for costs where a party, or its representative, has acted vexatiously, abusively, disruptively or otherwise unreasonably. Our attention was drawn once again to the decision of the Court of Appeal in McPherson in which the exercise of the rule 14 power was considered. At paragraph 40 Mummery LJ considered the submission that only costs attributable to the unreasonable aspects of the applicant's conduct could be ordered under rule 14:
"In my judgment, rule 14(1) does not impose any such causal requirement in the exercise of the discretion. The principle of relevance means that the tribunal must have regard to the nature, gravity and effect of the unreasonable conduct as factors relevant to the exercise of the discretion, but that is not the same as requiring BNP Paribas to prove that specific unreasonable conduct by the applicant caused particular costs to be incurred." Mummery LJ then accepted, at paragraph 41, that the wasted costs jurisdiction was not designed to punish unreasonable conduct, but explained that: "It is not, however, punitive and impermissible for a tribunal to order costs without confining them to the costs attributable to the unreasonable conduct. As I have explained, the unreasonable conduct is a pre-condition of the existence of the power to 14 order costs and it is also a

relevant factor to be taken into account in deciding whether to make an order for costs and the form of the order."

42. We consider the observations of Mummery LJ in McPherson to be equally applicable to rule 13(1)(b). At this stage the unreasonable conduct, its nature, extent and consequences are relevant factors to be taken into account in deciding whether to make an order for costs and the form of the order.

13. We have borne in mind this element of the UT decision.

14. In assessing the costs, we first consider the hourly rates being claimed. It is assumed that the solicitors HCR Legal LLP are within the City of Cambridge. Under the latest guidelines the hourly rate for a Grade A fee earner is £288 per hour, a Grade B is £242 per hour and Grade c £197 per hour. The rates claimed are above these levels, although we accept we are not bound by them as they are guidelines only.

15. This was not a complex case. The amount involved would not in our finding require the use of a Grade A fee earner for some 6 plus hours of work. We would accept there could be some advisory role in checking the applications and documents and signing off on the fee claim. We do not consider it required the involvement of a Grade A fee earner to prepare papers to counsel for the CMH and the final hearing, the more so as Assethold were debarred from participating at the hearing. We would allow an hourly rate of £325 but for no more than two hours. **Thus, a fee of £650 would be allowed for the Grade A fee earners involvement.**

16. We then turn to the other fee earners. We find that the hourly rates claimed are reasonable. However, the time spent on a claim of this quantum is excessive even allowing for the failings of Assethold. The number of letters out and telephone attendances are high. The schedule of work on documents is likewise high. There is recorded some 13.7 hours on dealing with applications, excluding the Grade A fee earner. The time spent on preparing the briefs to Counsel for a CMH and in essence an uncontested hearing at nearly 6 hours is likewise very high. The letter written on 4 July 2024 is some 3 pages long. We appreciate there would need be preparatory work but 13 plus hours for this one item of work is disproportionate. The more so when one compares this to the time claimed for preparing the witness statement of Mr Page which runs to some 3 and a bit pages and for which a time of over 4 hours is sought.

17. Doing the best we can we find that the solicitors fees for this case should be **assessed at £650 for the Grade A fee earner**. For the Grade B fee earner over 20 hours are claimed. We consider that given the amount of time spent on this case by other fee earners , which we shall turn to momentarily, **10 hours would be sufficient giving a claim of £2,650.**

18. Turning then to the other fee earners involved the Statement of Costs would indicate in excess of 47 hours spent on the case. Just over 27 hours seems to have been spent on the case by the Grade C fee earner and some 20 plus hours by the Grade D fee earners, including some 4.8 hours on preparing the Statement of Costs, which presumably came from a computer-generated time sheet. On the basis that this is a summary assessment would find that in addition to the time allowed at paragraph 16 above we would allow an additional 20 hours for a Grade C fee earner, **giving a fee of £4,200 and some 10 hours for the Grade D fee earner at £170 per hour gives £1,700**.

19. **This gives a total of solicitors' costs of £9,200 as against the £16,558 sought. The VAT on this is £1,840 making a total of £11,040.**

20. We then turn to Counsel's fees. We accept that these have been paid by evidence of the fee notes. However, we do wonder at the need to brief Counsel of Priya Gopal's call for a CMH which would have taken little in the way of preparation and we doubt the need for a skeleton argument. We would have thought that someone more junior would have filled the bill. The attachment to the fee notes shows the hourly rates and the time spent. The hourly rates are reasonable. The total sum of £5,000 for Counsel's fees for the claim of this nature is high. **We consider that an overall fee of £4,000 plus VAT would be a reasonable sum being a total of £4,800**

21. **The disbursements being the tribunal fees of £300 and the Land Registry fees of £24 are reasonably incurred and allowed.**

Judge Dutton 16 April 2025

ANNEX - RIGHTS OF APPEAL

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

3. 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.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.