FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AS/LSC/2025/0698**
Property	**:**	**Flat 9 Woodchester Court, 36 Rickmansworth Road, Northwood, HA6 2HE**
Applicant	**:**	**Kantilal Hirjibhai Gohil**
Representative	**:**	**N/A**
Respondent	**:**	**WE Black Ltd**
Representative	**:**	**Ms. Donna Mattfield (In-house solicitor)**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985 and applications for an order for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**
Tribunal members	**:**	**Judge Sarah McKeown** **Mrs. A. Flynn M.A. MRICS**
Date & venue	**:**	**10 Alfred Place, London WC1E 7LR** **24 June 2025**
Date of decision	**:**	**18 August 2025**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £500 (being an insurance excess) in respect of the year 2025 is a service charge.

(2) The tribunal does make an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(3) The Tribunal orders the Respondent to pay the Applicant £919.49 in respect of costs pursuant to rule 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules). Such sum to be paid within 28 days of the date of this decision.

(4) The Respondent's application for an order under rule 13(1) of the 2013 Rules is dismissed.

(5) The tribunal determines that the Respondent shall pay the Applicant £330 pursuant to rule 13(2) of the 2013 Rules within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

Delay and application by the Applicant

1. The Applicant has issued an application dated 25 July 2025 asking for confirmation that the Tribunal will issue a formal ruling on the substantive issues raised in the substantive application. This is said to be in addition to the Applicant's application for costs under rule 13 (see below).

2. The application is opposed (by email of 25 July 2025) on the basis of the concession made on 30 May 2025 (referred to below). It is not the case that the Applicant accepted at the hearing that the Tribunal would not be determining the service charge issue (the details of the hearing are set out below).

3. It has always been the Tribunal's intention to issue this decision – the application was pursued and proceeded to a hearing, at which the parties were informed that a decision would be issued. There has been some passage of time since the hearing, but this is simply as a result of the application made by the Respondent at the hearing for costs pursuant to rule 13. As this was an oral application made at the hearing, the Tribunal

had to give directions in respect of that application, which it did, dated 24 June 2025. The Applicant also sought to provide some further documents in relation to his application for costs and there was provision for this. In view of those outstanding matters, the Tribunal decided to issue one decision dealing with the substantive application and both applications for costs, as the substantive application was no longer opposed the applications for costs turned on the concession by the Respondent and whether the hearing on 24 June 2025 needed to have taken place. After completion of the directions, the Tribunal then had to find a time to reconvene to discuss the two applications for costs, which it has now done. The directions order of 24 June 2025 stated that the Tribunal would determine the costs applications on the basis of the written representations received in accordance with these directions in the week commencing 18 August 2025.

4. As stated in the email to the Respondent from the Tribunal on 4 June 2025, in the absence of a withdrawal request from the Applicant, the hearing would proceed. The Applicant has continued to pursue his application. The Tribunal therefore issues this decision on this application and pursuant to the hearing on 24 June 2025.

The substantive application – p.1

5. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether an insurance excess of £500 for the year 2025 is payable as a service charge or as a charge by him alone.

6. The application states that the landlord has said that the £500 insurance excess is payable by the Applicant alone as he is making the insurance claim and, it is said, this is contrary to the provisions of the Lease. The Applicant's Statement (p.92) states, among other things that The Sixth Schedule of the Lease, "Landlord's Covenants Part 1", para. 8(i) states: "Any exclusions and excesses applicable shall form a Service Charge Item".

7. On 2 April 2025 (p.47) the Tribunal gave directions.

Respondent's position – p.57

8. The Respondent's Statement of Case is dated 25 April 2025 and it states, among other things, as follows:

9. The Respondent is the registered freeholder of Woodchester Court and is the Applicant's landlord. The Building is managed by Sebright Property Management Company. The Applicant was the victim of a break-in at the Property which damaged the external surface of the back door. Sebright Property Management Company made a claim on the Respondent's insurance policy to repair the door and invoiced the Applicant for the excess of £500.

10. On 30 May 2025 the Respondent wrote to the Applicant stating that they no longer opposed the application. It was said that this decision took into account the specific circumstances of the claim and the support of the Residents' Association for his application. It was said that this was not a precedent and there may be other circumstances where it would not be fair and proportionate to expect all residents to share an excess.

11. The Respondent wrote to the Tribunal on 30 May 2025. On 4 June 2025, the Tribunal informed the Respondent that in the absence of a withdrawal request from the Applicant, the hearing would proceed.

12. The Applicant had emailed the Tribunal on 14 April 2025 stating that if his application was successful, he would wish to make a costs application, including "out of pocket expenses" and for his time spent in pursuing the application. He sent his bundle relating to his application for costs to the Tribunal on 4 June 2025.

The documentation

13. The Applicant has provided a bundle for use at the hearing consisting of 229 pages. Page references marked (p.) in this decision relate to that bundle. The Applicant has also provided a further bundle of 108 pages in relation to costs (page references marked "p.C" are references to this bundle). He also provided a Skeleton Argument during the course of the hearing (which the Respondent had seen). The Respondent provided, during the hearing, "Representations in Respect of the Applicant's Request for an Order on Costs". The Applicant had already seen this document and had provided a "Supplementary Note to Skeleton Argument".

The hearing

14. The Applicant appeared in person at the hearing (supported by his son) and the Respondent appeared was represented by Ms. Donna Mattfield, (in-house solicitor).

15. At the start of the hearing, the Applicant stated that he wanted clarity on the matter of the service charge, whether the excess was a service charge under the Lease. It was confirmed with the Respondent that it was agreed that the excess was a "Residential Service Charge within the meaning of the Lease. It was also confirmed that there was a covenant on the part of the Respondent to insure the Property and that the excess fell within para. 8(i) of the Sixth Schedule which provided that any exclusions and excesses applicable shall form part of a Service Charge.

16. The Tribunal confirmed that it could not comment on any future excess that may arise, but could issue a decision on whether this excess (£500 in 2025) is a service charge within the meaning of the Lease.

17. Ms. Mattfield confirmed that once the Tribunal hearing was concluded, the £500 paid by the Applicant in respect of the excess would be reimbursed to the Applicant.

18. The Applicant then pursued his application for costs.

19. The Applicant sought costs pursuant to r.13(1) The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

20. First, he sought interest on the £500 excess paid. He said that this was a cost as it was a loss he had suffered, that he was out of pocket for something that he should not have paid. He said that if the £500 was going to be a service charge, he should not have paid excess. He said he was put in the situation where he had no choice but to pay it. He was told the excess was his responsibility and he was out of pocket. He said that it was only recently the Respondent had conceded it was a service charge, but he had not had the £500 refunded to him. He said that he told the Respondent at the outset what the Lease said and told it that if he made a claim, he would claim interest. He said he was claiming interest at same rate as provided for in the Lease (4% above Base Rate as provide for in cl. 7(b), which was £13.96 to date and continuing until payment.

21. He also asked for the costs set out at p.C6. He said that his preparation was continuing, and the schedule he had put in only went up to to 4 June 2025. He said the additional costs in preparing for the hearing were not set out. He had got the figure of £19 from the Civil Procedure Rules r.46.5.

22. In respect of unreasonable conduct, he said that the Lease was unambiguous that the insurance excess was to be treated as a service charge item. The Respondent had argued that charging the excess outside service charge framework was consistent with market practice and this was their argument from start to end. He had asked them to refer to the Lease (p.C7) and had sent extracts from the Lease (p.C14).

He had raised the issue with Mr. Thompson who is the director of the management company, but he said the Applicant was responsible for paying it. The Applicant had gone through the matter, point by point, addressing how the service charge was to be calculated. He sent clear extracts demonstrating that this was a service charge. Mr. Thompson came back saying that it was market practice. The Applicant kept repeating that over and over. It came to the situation where the Respondent was not going to change its point of view. The Applicant suspected it had not looked at the Lease. The Residents' Association had also raised the point with the Respondent (p.C46). The answer (p.C46) from Mr. Thompson did not refer to anything in the Lease. The Residents' Association had agreed with the Applicant, but Mr. Thompson and the managing director of the Respondent did not agree with this. The Applicant's case was that the Lease took precedent over market practice, but this was rebuffed by the Respondent. The Applicant had no alternative but to raise a formal complaint, which he did (p.C31). He was told the managing director was dealing with it and got the response at p.C33, but the insurance company had nothing to do with who was responsible for paying the excess and that was in the Lease, which was between the Applicant and the Respondent.

23. Prior to that the Applicant had chased the Respondent several times on making a final decision. They said they would not discuss it with him any further (p.C34). He had no alternative but to have a legal decision made. A lawyer he spoke to had confirmed his interpretation was correct (p.C58). After that he gave formal notice that he would be proceeding to the Tribunal (p.C36). At that time, the Respondent was not prepared to change its stance. Before he applied to the Tribunal, he said that he would like to get advice from the Leasehold Advisory Service. He sent them an email (p.C61) and this response was sent to the Respondent (p.C63) and he asked them to reconsider. This was still rejected (p.C66).

24. The Applicant said that he had gone out of his way to resolve the situation. He could not understand the Respondent asking him on three occasions to seek legal advice when the Respondent had an in-house solicitor and it did not take any legal advice or refer to the Lease. He had no alternative but to apply to the Tribunal.

25. The Respondent had failed to take legal advice. Ms. Mattfield admitted later involvement in the process (about 11 June 2025). If legal advice had been sought earlier, the case would not have come to the Tribunal. The Respondent was taking advice from people who were not legally trained (e.g. Helena Ellis who signed as a surveyor). It was unreasonable to rebuff the Applicant on the correct law. The Respondent was also very dismissive of legal advice from the Leasehold Advisory Service.

26. The most important point, he said, was that the Respondent did not respond to mediation. The directions said that this case was suitable for mediation. The Applicant accepted the opportunity. The Respondent

did not refuse in writing but its silence was a refusal (he referred to the case in his Skeleton Argument – *PGF II SA v OMFS Company 1 Ltd* [2013] EWCA Civ 1288).

27. Ms. Mattfield then made submissions. She said that the Respondent had heard the Applicant's concerns. The threshold for unreasonable conduct was set out the *Willow Court Management* case. The question was not whether the Tribunal would have made that decision, but whether a reasonable person in landlord's position would have made that decision, whether there was no explanation for its conduct. It was a high threshold.

28. Addressing the points in the Applicant's Skeleton Argument, she submitted:

29. It was a question of whether there was a reasonable explanation as to how the Respondent had responded. It relied largely on advice of its managing agent, who had 16 years' professional experience, was an associated member of RICS and a member of the Institute of Residential Property Management. He was a professional with some good experience and the Respondent relied on his advice. The matter had to be looked at in context, the matter was discussed with the managing director, and he pointed to an experience he had previously where a tenant had left on a tap, and the tenant's negligence had caused significant flood damage and there was a significant excess. In that instance, it was not equitable to re-charge the service charge to all tenants. It was in this context that the Respondent considered this matter and in that context that Ms. Mattfield was instructed to send the email with the concession. The Respondent's position was not unreasonable in that context. It considered that there may be cases where it would be reasonable to re-charge one particular tenant.

30. The managing agent had experience, and Ms. Mattfield was a non-contentious planning lawyer who worked for the development arm of the business. Due to the nature of the claim and value, they could not instruct external Counsel. It was not reasonable to get Ms. Mattfield involved early on and incur costs given the size of claim. The Respondent relied on the advice of the managing agent. Disagreeing with legal advice is too low a threshold which would be met in nearly every. That was not the test.

31. In terms of mediation, there should be some opportunity for compromise, but this was £500 and turned on the understanding of the Lease and interpretation. The Respondent accepted the £500 was a service charge but queried whether it was fair and reasonable to charge the tenants for something only one tenant had the benefit of. The case of *PGF II SA v OMFS Company 1 Ltd* [2013] EWCA Civ 1288 was noted, but she relied on *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576 and said that the one factor to be taken into account was

the nature of the dispute. There was not really good deal of room to negotiate. It was accepted the Respondent had not engaged in mediation, but it was not unreasonable.

32. In terms of prospect of success, the Respondent relied on experience and whether it was fair and equitable in all the circumstances to apply it as a service charge. Concession dod not mean there was no legal merit – it is for the Respondent to review matters as the case approaches, which is a quite sensible approach. Ms. Mattfield took the case back to the Respondent for a review before the hearing and as a result was instructed to concede in order to avoid matters proceeding further. This was reasonable to and did not reach the high bar required.

33. In respect of the email of 30 May 2025, it was said that it was not unusual for there to be ongoing correspondence between the parties which is not copied to the Tribunal. The email was not contradictory - the Respondent had had previous experience with residents being unhappy in another building, when they had been charged for an excess and they were keen Ms. Mattfield should be clear, but that did not detract from the concession in this instance.

34. In terms of the bundle, Ms. Mattfield was sent a draft on 19 May 2025. She responded on 21 May. A couple of issues were pointed out for correction. On 22 May 2025, the Applicant asked her to assist with some amendments for next day, as he had a personal situation. She was happy to assist, and she arrange existing appointments to do so. She sent the amended bundle back the same day. On the following day, the Applicant pointed out that there was an error in terms of the bundle pagination, but she could not assist on that day as she did not have capacity.

35. Ms. Mattfield said that there were elements that could have been handled more effectively, but she not think that the Respondent's conduct reached the high threshold of being unreasonable conduct with no reasonable explanation. She understood that the Applicant had some concerns as to whether the concession was full (and it set out that it was) but it was an olive branch and an opportunity to move forward, but the matter had become more heightened and more tenaciously pursued. She said that that conduct was more unreasonable. She said that the parties did not need to be at the Tribunal and the Applicant's conduct in continuing with the claim after the concession was conduct that was unreasonable. She produced a schedule of costs. She acknowledged that it would be unreasonable to have the costs in full, but she asked for some of the costs, pursuant to r.13(1)(b). The schedule was from the letter of concession to date and the rate of £178 per hour was based on the information from HMCTS. She asked for a contribution to the costs.

36. The Applicant did not have any notice of the Respondent's application for costs, so he was given an opportunity to make submissions at the hearing but also to respond in writing. As the Respondent had made an

oral application for costs, the Tribunal said it would also allow the Applicant to bring up to date his schedule of costs (i.e. from 4 June 2025 to date), with provision for a response by the Applicant. Directions in relation to this were issued separately.

37. In respect of the amounts claimed by the Applicant, Ms. Mattfield said that the time spent was high, but it was acknowledged that he was acting in person, which would take add time. She questioned the point at which the schedule started and the costs prior to the application. She stated that her main argument was that the Respondent's conduct was not so unreasonable that there was not a reasonable explanation.

38. The Applicant's response (to the Respondent's submissions on his application and to the Respondent's costs' application) was as follows:

39. He referred to his age and said that he was not very good at legal things especially in respect of property. He said that he was a litigant in person who did not have the luxury of having a solicitor and he could not afford to put everything in a legal format. The case required legal interpretation. He said he was up to 2am that morning and he had spent hours on the case. When he responded to the Respondent, he was courteous and he acted within the rules. He had actually spent more time than on the schedule, but he went through and checked it and put it in a way for the Respondent to be charged. The hourly rate of £19 had not changed since about 2013. He could have used the time spent on other things (such as managing the investment fund for the family). He said that his costs were reasonable and started from January 2025.

40. He said that his substantive application had legal merit and the Respondent had admitted the excess was a service charge on 25 April 2025 but continued to oppose the claim until 30 May 2025, and this was unreasonable. The email of 30 May 2025 implied continued opposition and it was no sent to the Tribunal, which misled the Applicant. Para. 4 of the Respondent's Skeleton Argument reserved the right to make a r.13 costs application and so the Applicant had no choice but to continue proceeding to seek clarity.

41. The Tribunal has also had regard to the various written documents provided by both sides.

42. The Respondent's document dated 11 June 2025 headed "Representations in respect of the Applicant's Request for an Order on Costs" was provided to the Tribunal during the hearing. This states, among other things, that given the nature of the dispute at the heart of the substantive application, there was "little room for settlement". It is also said that the nature of the dispute leaves little room for compromise. It is said, among other things:

(a) The Respondent's reliance on experienced managing agents was standard practice;
(b) The Respondent's in-house solicitor had only been instructed late in this matter as no external property litigation solicitor would accept an instruction of this value;
(c) In light of the impending hearing and related costs and time, the Respondent's directors carried out a case review, which was a sensible and reasonable approach to litigation;
(d) The concession made was "full" to avoid the need for a hearing and was not a reflection of the legal merits of the case.

Further written representations

43. The Respondent opposes the Applicant's costs application in a document dated 15 July 2025. In summary, he states as follows:

44. The email of 30 May 2025 referred to herein was the second of two emails received that day. An earlier email sent stated that the Respondent would not be opposing the application, but this decision was "not a precedent", that the excess may be treated as service charge but the "distribution of that charge should be on a fair a proportionate basis and there may be other circumstances where it may not be considered fair and proportionate to expect all residents to share that cost (for example, where a claim arose as a result of tenant negligence)".

45. He states that this email makes it clear that the Respondent's position was not a full or unconditional concession, but rather a qualified stance that left open the possibility of different treatment of insurance excess in future cases. Their statement that the current case "is not a precedent" and that the approach to insurance excess "must be dealt with on a case-by-case basis" confirms this. As such, it was entirely reasonable and necessary for me to object to the proposed vacation of the hearing and to proceed to obtain a clear and unambiguous legal ruling from the Tribunal.

46. The Applicant's document also contains further submissions in relation to his application for costs. In summary, he states as follows:

47. The Respondent has consistently acted in ways that prolonged the proceedings and frustrated resolution:

(i) Refusal to accept reasonable offers to settle;
(ii) Refusal to participate in Tribunal-facilitated mediation;

(iii) Defence of the claim without legal merit or realistic prospect of success;
(iv) Failure to assist in preparation of the hearing bundle despite a clear Tribunal Direction.

48. At the hearing on 24 June 2025, the legal representative for the Respondent expressly admitted that "they could have handled the case better" and this was an admission that the Respondent's handling of the case contributed to its prolongation. In particular, the confusion caused by the contradictory email sent on 30 May could have been avoided had the Respondent acted with greater clarity and procedural fairness. This admission further supports my position that the Respondent has acted unreasonably throughout and should not be entitled to recover costs.

49. The document also sets out the Applicant's position in respect of the costs sought by the Respondent in the event that the Applicant does make a costs order in the Respondent's favour.

50. The Applicant has provided a document dated 27 July 2025 which is its response to the Applicant's response and to the Applicant's updated figures. It is said, among other things, that there was no need for a decision from the Tribunal as Tribunal decisions do not bind the parties in respect of future service charge items or years and the Respondent's concession resolved the substantive issues for the period in dispute; the Applicant's insistence on proceeding to a hearing despite that concession was unnecessary and unreasonable.

51. The Respondent's position is that it has not acted unreasonably, but the Applicant has, in refusing to withdraw the application or to otherwise avoid a hearing in light of the concession.

The background

52. The property which is the subject of this application is a two-bedroom flat in a purpose-built block of flats.

53. 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.

54. The Applicant holds a long lease (p.14) of the property. The Lease is between Howarth Homes Plc and the Respondent and is dated 12 July 2019. It provides, among other things, as follows:

55. The "Residential Service Charge" is defined as the obligation of the Tenant to pay the Residential Service Charge Proportion of the Residential Service Charge Items.

56. The "Residential Service Charge Items" are defined as an item of expenditure which is properly incurred by the Landlord in providing the Services (or any of them) which is for the benefit of the lessees of the Building (residential only).

57. The "Residential Service Charge Proportion" is defined as such fair and reasonable proportion as the Landlord acting reasonably shall from time to time determine.

58. By cl.5, the Applicant covenanted to perform "the Services" which are defined as the services set out in the Sixth Schedule (among other things). The Sixth Schedule, para. 8 imposes a covenant on the Respondent to insure the Building and para. 8(i) states that any exclusions and excesses applicable shall form a Service Charge Item (which itself is defined as including the Residential Service Charge).

The tribunal's decision and reasons

59. The tribunal determines that the sum of £500 (being an insurance excess) in respect of the year 2025 is a service charge (i.e. is not a charge to be borne solely by the Applicant). This is not contested by the Respondent, but the Tribunal finds that it does fall para. 8(i) of the Sixth Schedule and it is therefore a Service Charge Item within the meaning of the Lease.

Costs applications

60. 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.

61. 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;
...
(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.

62. 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. The Tribunal proposes to apply the 3-stage procedure.

63. 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".

64. 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.

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

66. 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?"

67. 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".*

68. 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."*

69. 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.*"

70. 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.

71. 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*".

72. 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.

73. 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.

74. 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.

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

Analysis – Applicant's application

Unreasonable behaviour

76. The question for the Tribunal, 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?

77. The Tribunal is satisfied that there has been unreasonable conduct on the part of the Respondent, i.e. conduct for which there is no reasonable explanation.

78. The Applicant was challenging the apportionment of the whole £500 to him by at no later than 27 January 2025 (p.C7-C28) and there was considerable correspondence from this date up to and including 30 January 2025. On 27 January 2025, the Applicant had sent the Respondent extracts from the Lease, including para. 8(i) of the Sixth Schedule. A response sent on 30 January 2025 stated that Mr. Thompson had looked at the Lease and could" see no mention of insurance excess". A further response on 31 January 2025 stated, among other things, that if the Applicant "would like to take this further then by all means, please so. Unfortunately you will likely end up bearing more fees in legal disputes on top of the inevitable excess which is your responsibility". It then states "We will not be discussing this further".

79. On 7 February 2025, Mr. Thompson emailed the Residents' Association (p.C46) stating that the lease did not mention payment of the excess on a buildings insurance policy. On the same date, the Residents' Association emailed Mr. Thompson essentially agreeing with the Applicant's interpretation (p.C46 – see also earlier emailed at p.C47). A response from Helena Ellis (p.C45) on the same date was that they would "not be involved in this further…".

80. The Applicant sought advice from the Leasehold Advisory Service which was (p.216) that the Lease allows for the recovery of the excess for insured risks as part of the service charge.

81. The Applicant made a complaint to the Respondent (dated 28 February 2025 – p.218), which enclosed the advice from the Leasehold Advisory Service. The Applicant asks that the Respondent reconsidered its "Final Response" of 7 February 2025. The response to this (p.220) was simply that the Respondent had provided a response which was final.

82. The Applicant notified the Respondent that he would be making an application to the Tribunal on 7 February 2025 (p.C36). This was after the managing director of the Respondent had affirmed the position that the Applicant was liable to pay the full excess (p.C36). On 7 February 2025 (p.C43), the Applicant also commented on the "final response" of the Applicant stating that he would be applying to the Tribunal and would be seeking, among other things, the Tribunal fees and reasonable out of pocket expenses. The response back from the Respondent (p.C45) was to "[l]et the Tribunal decide which will then be binding on the landlord… I have already clarified what I am going to do and will proceed accordingly".

83. The application (p.4) was made on 6 March 2025 (p.C68) and it clearly set out the Applicant's position and the history of the matter. It also states that the Applicant would be applying to the Tribunal to award him "other permissible costs in the event that it rules in my favour".

84. The Respondent's Statement of Case (p.57) dated 25 April 2025 admitted that the excess would be a Service Charge Item, but argued that it was fair and reasonable for the excess to only be charged to the Applicant (p.59, para. 4.2, para. 4.4, para. 6.1(a)) – as noted in the Respondent's submissions on costs, until 30 May 2025, the Respondent was still arguing that the apportionment provisions applied, i.e. that it was still within the discretion of the Respondent to require the Applicant to pay the full £500. It is stated that the Respondent "took advice from an experienced professional, relied on its own experience and industry practice". This was still the Respondent's position on 21 May 2025 (p.227).

85. On 30 May 2025 (p.C107) the Respondent confirmed that it did not contest the application. By this time, the bundle for the hearing had already been prepared (sent to the Tribunal on 30 May 2025).

86. The directions (p.47) set out that the case was suitable for mediation. The Applicant engaged with the process and sent an agreement to mediate (p.C72). The Respondent did not engage and did not agree to mediate. The Respondent submits that the nature of the dispute left little room for compromise and turned on legal interpretation of the Lease, and for that reason the Respondent could not reasonably enter the mediation process, but this ignores: (a) the Respondent's refusal to address interpretation in the Lease in pre-issue correspondence; and (b) the concessions made, first in the Statement of Case and then on 30 May 2025.

87. The Respondent's actions were not designed to advance the resolution of the case. Indeed, they failed to engage with the attempts both by the Applicant to resolve the matter and the mediation as provided by the Tribunal.

88. When looking at the applicant's conduct, the Tribunal reminded itself of the guidance at paragraph 23 of *Willow Court*: "*Unreasonable" conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case*." Such conduct can take various forms and is not limited to that "*designed to harass the other side…"*. That is clear from the use of the word "includes".

89. The Tribunal does note the Respondent's submission in terms of para. 143 of *Willow Court*, that *"It is legally erroneous to take the view that it is unreasonable conduct for claimants in the Property Chamber to withdraw claims or that, if they do, they should be made liable to pay the costs of the proceedings. Claimants ought not to be deterred from dropping claims by the prospect of an order for costs on withdrawal, when such an order might well not be made against them if they fight on to a full hearing and fail"* and that it is said the same principle should apply where a Respondent made a late concession.

90. There is nothing inherently unreasonable in pursuing an unsuccessful case. However, it may be unreasonable to pursue a case (or part of a case) that is totally devoid of merit, particularly where the weaknesses have been spelt out by the other party. This is one such case.

91. The Respondent advised the Applicant to seek legal advice (e.g. on 30 January 2025 – p.C17, 31 January 2025 – p.C33-C34), but when he did, it did not engage with that advice as made known to it. The Respondent only recently obtained a legal representative (although she was available to it, acting in-house, albeit primarily for the development side of the business) but it took advice from an experienced person and, at the hearing, relied on the taking of that advice. Despite this, the weakness

of its case was not appreciated, it appears, on or about 30 May 2025. This is despite the Applicant making his position clear on many occasions, backed up, ultimately, by the advice received from the Leasehold Advice Service and the Residents' Association.

92. Despite the Applicant making clear the parts of the Lease relied on, and the Respondent accepting that the excess is a Service Charge Item and that it falls within Sixth Schedule, para. 8(i), the Respondent's position was, as set out in correspondence, that there was, in the Lease, "no mention of insurance excess" and that the Lease "did not mention payment of the excess on a buildings insurance policy".

93. The Respondent continually failed to engage with the issues. The Respondent's position was: on 31 January 2025 was that the Applicant could make an application to the Tribunal and that the Respondent would "not be discussing this further"; on 7 February 2025 that they would "not be involved in this further…". There was no engagement with the Applicant's complaint, the only response being that the Respondent had provided a response which was final. Once warned of the potential application to the Tribunal, the response from the Respondent was "[l]et the Tribunal decide which will then be binding on the landlord… I have already clarified what I am going to do and will proceed accordingly".

94. The Applicant was left with no alternative but to make an application to the Tribunal. It was, in all the circumstances, unreasonable of the Respondent to oppose that application until 30 May 2025.

95. The Respondent's letter of 30 May 2025 states that the decision to no longer oppose the application took into account the specific circumstances of the claim and the support of the Residents' Association for his application. These factors were (or should have been) already known to the Respondent.

96. The Respondent sought to criticise the Applicant for not withdrawing the application (leading to vacation of the hearing). The Applicant had, however, been clear from the outset that he would wish to pursue his application for costs. It was not unreasonable, in the circumstances, for the Applicant to refuse to withdraw his application and to wish the hearing to proceed, so that he could seek his costs. The need for the hearing to determine the costs' application was as a direct result of the Respondent conduct leading up to the substantive application and its opposition to the substantive application.

97. As stated above, it was not the case that the Applicant accepted at the hearing that the Tribunal would not determine the substantive issue in light of the concession and instead pursued only the question of costs and, indeed, the Tribunal indicated that it would issue a decision. As stated in the Respondent's response dated 27 July 2025, the Applicant did not withdraw the application.

98. No criticism is made of the Respondent in terms of preparation of the bundle. It appears that Ms. Mattfield did what she could to assist in the preparation of the bundle.

99. The Respondent did make an oral application at the hearing for its costs pursuant to r.13. That has meant further time and costs incurred, as the Tribunal had to allow the Applicant an opportunity to respond to this application (leading to the directions given). It is noted that this further time did allow the Applicant an opportunity to submit an updated schedule of costs sought, so he did obtain some benefit from it, but the primary cause of the need for further directions, written documentation and further consideration by the Tribunal (by way of a re-convened hearing) was as a result of the Respondent's application for costs. That application was not successful. The Tribunal has considered whether the costs incurred by the Applicant in respect of dealing with that application should be recovered by him, pursuant to r.13. The Tribunal finds that they should:

100. The Respondent was informed on 4 June 2025 (i.e. nearly 3 weeks before the hearing) that in the absence of a withdrawal request from the Applicant, the hearing would proceed. The hearing did proceed, but despite this, the application for costs was made orally at the hearing, leading to the consequences set out herein.

Discretion

101. It is the view of the Tribunal that it is reasonable to make a costs order. It is recognised that unreasonable conduct on its own does not necessarily justify making a costs order, but the Applicant has incurred costs preparing for a hearing in respect of an application which has ultimately been successful and which was conceded by the Respondent about 3 weeks before the hearing. If, as was the case, the Applicant wanted to seek costs as against the Respondent, then this would have to be determined by the Tribunal in any event. The Tribunal does not see why, in those circumstances, the Applicant should not recover at least some of the expenditure incurred by it (the amount of the order is dealt with in the following section).

Amount of order

102. The Upper Tribunal points out, in the context of the third stage of the process, that it does not follow, that even if the first 2 stages are cleared, an order for full reimbursement on a standard basis should inevitably follow. There remains an obligation to deal with the case justly and

fairly, bearing in mind proportionality, and the other matters listed at paragraph 29 of the *Willow* decision.

103. Turning first to the application for interest on the sum of £500 paid. The Tribunal finds that this is not a "cost" and it cannot be awarded pursuant to r.13(1)(b). Costs are the expenditure or expense that is incurred during the course of litigation, in bringing or defending a claim or application. The Tribunal therefore makes no order in this respect.

104. Turning to the costs sought at p.C6, these do fall within the definition of costs and can be the subject of an order pursuant to r.13(1)(b). The Tribunal will therefore deal with the amount of such costs order.

105. The Civil Procedure Rules do not apply to the Tribunal, but the Tribunal has had regard to the fact that para. 3.4 of PD46 provides that the amount allowed to a self-represented litigant under r.45.5(4)(b) is £19 per hour.

106. The first schedule received from the Applicant (p.C6) seeks £912. The second schedule received from the Applicant seeks a further £955.99 (the £912 for the 48 hours claimed in the first schedule were carried forward).

107. The Tribunal will allow the sum of £593.75 for the following (at £19 per hour):

Correspondence with the Respondent/managing agent	7 hours
Drafting and submitting the application incl. legal research	4.5 hours
Correspondence with Tribunal	2 hours
Considering Respondent's response and responding	1.5 hours
Preparation of bundle	4.75 hours
Legal Response from Respondent and Applicant's response	2 hours
Correspondence with the Respondent re concession	0.5 hours
Prep. for the hearing, incl. Skeleton Argument & costs app	6 hours
Prep. of response to the Respondent's costs app	2 hours
Preparation of updated costs application	1 hour

108. The Tribunal also allows £84.50 in terms of printing costs, £11.60 travel costs for the Applicant and £229.64 for the Adobe subscription (noting the explanation given).

109. The Tribunal has allowed the Applicant's costs at the rate for a litigant in person. He had the support of his son at the hearing, but the Tribunal declines to award the costs claimed for Mr. Pretash Gohil's attendance (and work) as a "lay representative".

110. The total amount allowed is therefore £919.49.

Analysis – Respondent's application

Unreasonable behaviour

111. The question for the Tribunal, 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?

112. The Tribunal is not satisfied that there has been unreasonable conduct on the part of the Respondent, i.e. conduct for which there is no reasonable explanation. The Tribunal relies on its findings above.

113. The Tribunal therefore dismisses the Respondent's application for costs pursuant to r.13(1)(b).

Application under s.20C/para. 5A and refund of fees

114. The Applicant applies for an order under section 20C of the Landlord and Tenant Act 1985 Act and/or para. 5A of Sch. 11 of the Commonhold and Leasehold Reform Act 2002. Although the landlord indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act and/or para. 5A of Sch. 11 of the 2002 Act and, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

115. The Applicant made an application for a refund of the fees that he had paid in respect of the application and the hearing[1]. He sought reimbursement of fees paid pursuant to r. 13(2) The Tribunal Procedure

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

(First-tier Tribunal) (Property Chamber) Rules 2013 which provides that 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. He said that reimbursement of the fees went naturally with his application pursuant to r.13(1) and that if the Respondent had resolved the matter, he would not have had to come to the Tribunal.

116. The Respondent said that in theory it had "no issue" with paying part of those fees (but did not say how much it should pay).

117. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund the fees paid by the Applicant (being £330) within 28 days of the date of this decision.

Name: Judge Sarah McKeown **Date:** 18 August 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).