



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

Case Reference : HAV/43UM/LSC/2025/0673

Property : 7, Woodlands House, 88 Old Woking Road, West Byfleet KT14 6HZ

Applicant : Ivor Du Merwe

Representative :

Respondent : Eleven Management Company (West Byfleet) Ltd

Representative : Rradar Limited

Type of Application : Applications under Landlord and Tenant Act 1985 s.20C, Commonhold and Leasehold Reform Act 2002 paragraph 5A, Schedule 11 and Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Tribunal Member(s) : Judge D Gethin

Date type and venue of Hearing : On the papers

Date of Decision : 21 October 2025

COSTS DECISION

Summary of the Decision of the Tribunal

1. **The application by the Applicant for an order under LTA 1985 s.20C is REFUSED.**
2. **The Respondent may not recover the costs of the proceedings from the Applicant by way of an administration charge.**
3. **The application by the Respondent for an order for costs under rule 13(1)(b) is REFUSED.**

Background

4. The Applicant made an application for a determination of liability to pay and reasonableness of service charges demanded in advance for the service charge year 2025.
5. The application was received on 22 April 2025.
6. The Applicant further sought orders pursuant to Section 20C of the Landlord and Tenant Act 1985 (“LTA 1985”) and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (“CLRA 2002”).
7. Directions were issued on 9 July 2025 listing the application for a case management and dispute resolution hearing on 22 August 2025 (“the CMDRH”).
8. At the CMDRH, the Tribunal explained that it was of the view that the consultation requirements imposed by section 20 did not apply to a service charge demand for payment on account of anticipated future expenses.
9. The Tribunal stated that it was therefore minded to strike out the application in accordance with Rule 9(3)(e) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”) on the grounds that the Tribunal considered that there was no reasonable prospect of the Applicant’s case succeeding. The Tribunal invited the parties to submit written representations as to whether or not the proceedings should be struck out.
10. Written representations were received from both parties, and the application was indeed struck out pursuant to the Decision of Judge Jutton dated 11 September 2025. Judge Jutton also issued directions in

respect of the applications made under LTA 1985 s.20C and CLRA 2002 para.5A, Sch. 11.

11. No application had been made at that point by the Respondent for an order under Rule 13(1)(b) of the 2013 Rules. Within its submissions on the s.20C and para.5A applications dated 30 September 2025, the Respondent submits that it was unreasonable for the Applicant to have brought the substantive application in this case and the Respondent has wasted costs in defending the application. (“the r.13 Application”).
12. Rule 13(1)(b) provides that the tribunal may make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings in a residential property case or a leasehold case.
13. The Application is made within the time limits prescribed by Rule 13(5)(a) namely “*at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends... a decision notice recording the decision which finally disposes of all issues in the proceedings*”.
14. Rule 13(4)(a) provides that the “*person making an application for an order for costs... 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*”. The r.13 Application, albeit contained within its Submissions on Costs, was copied to the Applicant at the same time it was sent to the Tribunal.
15. Rule 13(6) provides that the Tribunal may not make an order for costs against a person without first giving that person an opportunity to make representations.
16. In his Reply, the Applicant made submissions as to whether his conduct of the proceedings was unreasonable conduct.
17. Given both parties have made submissions, I accept an application has been made under r.13(5)(a) and it is not necessary to direct the Applicant to respond under Rule 13(6).

Section 20C of the Landlord and Tenant Act 1985 (“LTA 1985”)

18. The Applicant argued that their service charge should not include any costs incurred by the Respondent in relation to the Tribunal proceedings for the following reasons:

- a) the Applicant reasonably believed that the leaseholders of the building in which the Property is situated had been excluded from meaningful participation in the s.20 consultation process. No consultation had taken place before an estimate demand was served on the leaseholders in the sum of £9,000;
 - b) the Respondent had incurred unnecessary legal costs in instructing both solicitors and counsel rather than appear in person;
 - c) that insurance already covers the legal costs and the Respondent has not disclosed the amount of the excess choosing, instead, to serve a demand for £4,268.40 although I note that I have not had sight of the demand;
 - d) the Respondent has no other funds and to allow legal costs to be recovered effectively underwrites the directors' decision to instruct legal representation.
19. The Respondent, which does not appear to have been advised by legal representatives on its submissions, submits that since the Applicant had wholly failed in his application, it necessitated the Respondent in incurring costs in securing legal representation to respond to the substantive application. It does not expressly state that it relies on clause 5.3 of the Lease to recover the costs of the proceedings through the service charge rather than as an administration charge, but paragraph 5 of the Respondent's submissions states:

"By Clause 5.3 of the Lease the Applicant covenants with the Respondent: "To pay and discharge and keep the Landlord and Company indemnified from and against all Outgoings whatsoever". Accordingly we submit that the Respondent is entitled to include costs it incurs in defending a service charge challenge."

Discussion

20. I consider it is not just and equitable in all the circumstances to make an order under LTA 1985 s.20C.
21. The matter had some complexity, and I am satisfied that it was reasonable for the Respondent to employ solicitors and counsel. Moreover, there is nothing to suggest the Respondent has acted improperly during the proceedings. The submissions and the documentation by the Respondent in this case were relevant, were not excessive and they were proportionate to the issues involved.
22. The Applicant wholly failed in the application, it being struck out on the basis that the Tribunal did not have jurisdiction to limit a service charge estimate because there has yet to be a statutory consultation undertaken,

and that it was done so at an early stage following the direction from Judge Jutton that he was minded to do so.

23. The Respondent has directed me to clause 5.3. That does not assist the Respondent as that only relates to matters concerning the imposition of charges on the building or the Estate.
24. I take this point no further, but I do not accept the Applicant's submission that "*The company exists solely to act for our collective benefit. Instructing external solicitors and counsel to oppose one leaseholder, at the collective expense of all, defeats that purpose and is plainly not reasonable.*" Whether it is reasonable for the Respondent to instruct legal representatives in proceedings will be a matter of fact and degree.
25. I have had regard for the following in reaching the decision that it is not just and equitable to make a s.20C order because:
 - a) the Respondent is a lessee-owned company which exists to provide services for the benefit of the building and to provide a legal framework for the leaseholders to hold their valuable leasehold interests;
 - b) defending the proceedings was necessary and sensible, given that if the Respondent cannot demand monies on account prior to undertaking a statutory consultation, it may not be placed in a position to do necessary works at all;
 - c) the Respondent was the successful party in the proceedings;
 - d) a s.20C order only benefits the Applicant and not the other lessees in the building which is not fair and just for the other lessees;
 - e) the costs of the proceedings are born by the Respondent and should not, as the Applicant would suggest, ordinarily be born by the individual directors unless there is evidence of negligence or wrongdoing;
 - f) if the costs of the proceedings cannot be recovered through the service charge, any shortfall will need to be paid by the Respondent and it will risk becoming insolvent unless there is a call on its members to put it into funds. If such a call was made, the members would not have the same statutory rights afforded to them as lessees to challenge the reasonableness of those charges; and
 - g) refusing a s.20C order does not prevent a leaseholder from challenging any costs that were unreasonably incurred for the purposes of LTA 1985 s.19. By contrast, to make a s.20C order would put the Respondent at a significant disadvantage as it would have no opportunity to justify any particular item or cost.

26. For the avoidance of doubt, I have not determined that the lessees, including the Applicant, are liable to pay the costs. Any lessee, including the Applicant, may bring a separate application in time should the costs of these proceedings be passed through the service charge. Such a challenge could be on the basis that they are not liable to pay under the terms of their lease or that the costs are not reasonable.
27. I have also not determined whether the Respondent should have sought to defray the costs of the proceedings by way of insurance as the Applicant submits. There was simply no evidence from the parties on which to reach a view.

Conclusion

28. The application by the Applicant for an order under LTA 1985 s.20C is refused.

Paragraph 5A, Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("CLRA 2002")

29. The Applicant makes an application under paragraph 5A, Schedule 11, CLRA 2002 extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings.
30. The Applicant relies on the same grounds as rehearsed for the s.20C application.
31. The Respondent does not make any express submissions on the effect of para.5A, preferring to refer to rule 13. Again, the only submission from the lessee in respect of the lease terms is reference to clause 5.3 which equally does not apply here.
32. Any proceedings, whether brought by the Applicant or the Respondent, could not be said to have been brought "*for the purpose of or incidental to the preparation and service of a notice under Sections 146 and 147 of the Law of Property Act 1925*" as the Respondent does not have the right to forfeit the lease. That right is reserved only to the landlord.
33. The costs of proceedings before the Tribunal are therefore not recoverable from the Applicant as an administration charge.
34. If I am wrong on that view, I also considered the application on the basis that the lease does provide for such costs to be passed on as an administration charges by either the lessor or the Respondent, without deciding whether that is the case or not.

Discussion

35. I consider it is just and equitable in all the circumstances to make an order under paragraph 5A.
36. The equivalent application in respect of service charges under LTA 1985 s.20C has been found to be determined on the basis of what is just and equitable in all the circumstances (*Tenants of Langford Court v Doren Ltd* LRX/37/2000).
37. I am of the view that the approach must be the same under paragraph 5A, which was enacted to ensure that a parallel jurisdiction existed in relation to administration charges to that conferred by s.20C for service charges.
38. An order restricting an administration charge is an interference with the landlord's contractual rights, and must never be made as a matter of course. Further, I should take into account the effect of the order on others affected, including the landlord, see *Re SCMLLA (Freehold) Ltd* [2014] UKUT 58 (LC) and *Conway v Jam Factory Freehold Ltd* [2013] UKUT 592 (LC).
39. The success or failure of a party to the proceedings is not determinative. Comparative success is a significant matter in weighing up what is just and equitable in the circumstances. The Respondent has been wholly successful in this determination. However, from reading the case file, it was Judge Jutton who raised the point that the Tribunal does not have jurisdiction to limit an estimate demand if the Respondent has not consulted. The Applicant's application may have been struck but it was not vexatiously made. The case for making the order is overwhelming.

Conclusion

40. Under CLRA 2002 para. 5A, Sch. 11, none of the costs incurred by the Respondent in connection with the Tribunal proceedings shall be payable by the Applicant as an administration charge.

Order for Costs under Rule 13 of the 2013 Rules

41. In the Respondent's submissions, the Respondent further submitted "*that it was unreasonable for the Applicant to bring the application in this case and the Respondent has wasted costs in defending proceedings i.e. a reasonable leaseholder would not have commenced proceedings when it was premature to do so. The impact otherwise is that leaseholders who have not been involved in the proceedings are prejudiced as their service charges will include any excess element.*"

42. The Applicant submits that:
- a) he is a litigant in person who brought the case in good faith in the belief that he, and the other directors, had the benefit of the statutory protection afforded by the consultation requirements;
 - b) acting prematurely, as in this case, is not akin to acting unreasonably;
 - c) the case was struck out because of statutory interpretation and not because the Applicant had acted vexatiously.

43. Rule 13(1)(b) provides:

*13.—(1) The Tribunal may make an order in respect of costs only—
...*

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

- (i) an agricultural land and drainage case,*
- (ii) a residential property case, or*
- (iii) a leasehold case; or...*

44. The three stages that the tribunal need to go through when considering whether a costs order should be made under Rule 13 are set out in *Willow Court Management Company Ltd v Mrs Ratna Alexander* [2016] UKUT (LC) (“*Willow Court*”) at paragraphs 27 and 28 which are set out below.

27 When considering the rule 13(1)(b) power attention should first focus on the permissive and conditional language in which it is framed: “the Tribunal may make an order in respect of costs only ... if a person has acted unreasonably....” We make two obvious points: first, that unreasonable conduct is an essential pre-condition of the power to order costs under the rule; secondly, once the existence of the power has been established its exercise is a matter for the discretion of the tribunal. With these points in mind we suggest that a systematic or sequential approach to applications made under the rule should be adopted.

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.

45. What does it mean for a person to have acted unreasonably? In *Lea & Ors v GP Ilfracombe Management Company Limited* [2024] EWCA Civ 1241, the Court of Appeal approved and followed the decisions in *Ridehalgh v Horsefield & Anr* [1994] Ch 205 (“*Ridehalgh*”) and *Willow Court*.
46. Firstly, neither *Ridehalgh* nor *Willow Court* decided that unreasonable conduct must involve vexatious conduct or harassment. Secondly, that deciding whether or not there has been unreasonable conduct, and if so, whether an adverse order for costs should be made, is a fact-specific exercise. Although sufficient guidance in respect of rule 13(1)(b) had been set out in *Ridehalgh* and *Willow Court*, a good practical rule is for the Tribunal to ask: would a reasonable person acting reasonably have acted in this way? Is there a reasonable explanation for the conduct in issue?

Discussion

47. The Applicant is a litigant in person. Ahead of the Case Management and Dispute Resolution Hearing (“CMDRH”) on 22 August 2025, the Respondent’s position statement did not raise the point that the consultation requirements do not apply to on account demands and stressed that consultation had taken place in the intervening period. This was despite the Respondent having received legal advice and being legally represented at the CMDRH.

Conclusion

48. Accordingly, I conclude that the Applicant’s conduct was not objectively unreasonable in the circumstances and that the Respondent’s application for costs falls at the first hurdle.
49. Having come to this conclusion, I am not required to consider whether I should go on to use my discretion to make an award of costs nor to quantify such costs.
50. I should add that, if I am wrong on my consideration of the first stage of the procedure, i.e. that the Applicant had behaved unreasonably, for the reasons set out in this decision, I would have exercised my discretion not to make an award of costs. Although the Applicant continued to make representations rather than concede the appeal once Judge Jutton raised the point, those representations would not be considered to be

unreasonable.

51. On the facts of this case, I find that the Applicant's was both premature and misconceived but that the Applicant did not act unreasonably in challenging the Respondent.
52. I do not accept the Applicant's case was unreasonable or exaggerated so as to result in unreasonable behaviour. There is nothing in the Notice Striking Out Application of Judge Jutton dated 11 September 2025 that indicates the Applicant's conduct was in any way unreasonable.
53. I do not find that the Applicant's conduct amounted to unreasonable behaviour. The Applicant brought to the Tribunal a dispute that the Tribunal took a preliminary view, invited submissions from the parties and reached a decision.
54. It follows that the application for costs is refused.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.