FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AY/LSC/2024/0622**
Property	:	**Southwyck House, London SW9 8TT**
Applicants	:	**(1) Alasdair Ross (Flat 353)** **(2) Beryl Campbell (Flat 124)** **(3) Adam Nelson (Flat 133)** **(4) Alex Monro (Flat 134)** **(5) Simon Barry (Flat 135)** **(6) Andy Parrott & Kay Gatehouse (Flat 203)** **(7) Jose Gomez (Flat 208)** **(8) Alexandra Lowe (Flat 223)** **(9) Lorna Jessop (Flat 301)** **(10) Manon Ligato (Flat 305)** **(11) Alex Barr (Flat 316)** **(12) Caspar Addyman (Flat 324)** **(13) Juliette and Roger Garside and Jonathan Phillips (Flat 364)**
Respondent	:	**London Borough of Lambeth**
Type of Application	:	**Liability to pay service charges**
Tribunal	:	**Judge Nicol** **Mr J Naylor FRICS FIRPM**
Date of Decision	:	**5th January 2026**

COSTS DECISION

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(1) The Respondent may not impose service charges or administration charges in respect of their costs of the proceedings.

(2) The Respondent shall reimburse the Applicants the Tribunal fees of £330.

(3) The Applicants' application for a costs order under rule 13(1)(b) of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013 is dismissed.

The Tribunal's Reasons

1. The Tribunal issued a decision in this matter on 11th November 2025, including directions for the determination of the Applicants' applications for costs. Both parties provided written submissions and the Tribunal has proceeded to determine the costs issues on the papers, without a further hearing.

2. The Applicants sought three orders:

(a) An order under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") that the Respondent may not recover their costs of these proceedings through the service charge.

(b) An order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondent may not recover their costs of these proceedings by administration charges from each Applicant.

(c) An order that the Respondent pay the Applicants' costs of these proceedings, said to consist of counsel's fees of £16,500 and Tribunal fees of £330, under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Section 20C and paragraph 5A applications

3. Under section 20C of the 1985 Act:

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a … residential property tribunal …, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(3) The … tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

4. Under paragraph 5A of Schedule 11 to the 2002 Act:

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

5. In *Bretby Hall Management Co Ltd v Pratt* [2017] UKUT 70 (LC) the Upper Tribunal summarised the applicable principles as follows:

(a) The only principle upon which the discretion should be exercised is to have regard to what is just and equitable in the circumstances.

(b) The circumstances include the conduct of the parties, the circumstances of the parties and the outcome of the proceedings.

(c) Where there is no power to award costs there is no automatic expectation of an order under s.20C in favour of a successful tenant although a landlord who has behaved unreasonably cannot normally expect to recover his costs of defending such conduct.

(d) The power to make an order under s 20C should only be used in order to ensure that the right to claim costs as part of the service charge is not used in circumstances which make its use unjust.

6. The Tribunal has applied the same principles to both applications under section 20C and paragraph 5A.

7. The Tribunal has concluded that it would be unjust for the Respondent to recover their costs from the Applicants and other service charge payers at Southwyck House. The Applicants succeeded on some of the issues they raised. The Respondent pointed out that, both in terms of the number of issues and in the amount of money involved, the Applicants succeeded on a minority of the issues considered by the Tribunal. However, to look at that in isolation is reductive in the context of this case:

(a) A significant number of issues did not make it to the Tribunal but were conceded by the Respondent.

(b) The Respondent asserted that the concessions were purely commercial, made without any admission of liability, but that is not correct. The Respondent omitted to mention that litigation risk was also part of the calculation, i.e. issues were conceded because it was not worth contesting matters for which there was a significant prospect of being unsuccessful. An example is tree maintenance – in an email dated 18th November 2024, the Respondent set out why they were conceding charges for tree maintenance, namely that they probably included charges relating to trees not within the estate.

(c) The Tribunal strongly criticised the Respondent for their inaccurate measurement of the estate and their failure to explain it (paragraph 51 of the decision). Further, the Tribunal took this and other matters as indicative of a generally defective approach to service charges (paragraphs 15-17). In their submissions on costs, the Respondent asserted that the aforementioned email of 18th November 2024 did explain the inaccurate measurement but it did no such thing, being concerned with whether trees had wrongly been included in the estate, not with measuring the size of the estate. Moreover, although the lack of explanation was raised during the hearing of this case, the Respondent did not at that time point to this email as providing that explanation.

(d) The Applicants were successful in excluding the service charge category of Overheads. This issue was too substantial, involving significant sums of

money from across most service charge heads, to be equated with other issues as one amongst many.

(e) The Applicants were also successful in establishing that the Coldharbour Open Space was not part of the estate which will have repercussions beyond the correct charges for particular service charge items in the 6 years in dispute in this case.

(f) Another substantial issue was that of whether the Respondent served the requisite consultation notices ahead of entering into the Old LTQAs. The Tribunal found in the Respondent's favour on that issue but the fact is that the Respondent could have dealt with it long before it ever got to the Tribunal by producing copies of the notices. They couldn't because they had probably lost them. It is understandable that the Applicants combined this with some other circumstantial evidence to conclude that the notices actually never existed. It is unjust for the Applicants to pay for the costs arising from the Respondent's errors, even if they did not ultimately succeed on that issue.

(g) Further, in relation to the heating system, the Applicants have a genuine concern that they are being supplied with excess heat. It took some considerable work by everyone involved during the hearing to get a comprehensible explanation as to how the system worked. The Applicants cannot be criticised for continuing to pursue that particular complaint, at least until that part of the hearing.

8. The fact is that, whether for good reason or not, the Respondent's service charge regime is opaque and expensive. The Respondent criticises the Applicants for the number of information requests they made and their failure to narrow the issues but, frankly, the Applicants' approach is entirely understandable. They spent some years trying to understand the service charges. To their credit, the Respondent tried to engage with the Applicants' queries but the fact is that they eventually gave up and told the Applicants to take their issues to the Tribunal. They refused to enter into mediation. Given that the Applicants subsequently earned substantial concessions from the Respondent and obtained significant findings from the Tribunal in their favour, it is not open to the Respondent to criticise the Applicants for following their advice and involving them in the further costs of Tribunal proceedings.

9. In the circumstances, the Tribunal is satisfied that the just and equitable outcome in this case is that the Respondent should bear their own costs of the proceedings. Therefore, the Tribunal grants orders prohibiting the Respondent from adding any part of those costs to the service charge or recovering them by administration charges from the Applicants.

Costs under rule 13

10. The relevant parts of rule 13 of the Procedure Rules state:

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

11. For the same reasons as those set out above in relation to orders under section 20C and paragraph 5A, the Tribunal is satisfied that the Respondent should reimburse the Applicants the fees paid to the Tribunal in the sum of £330. It is the Respondent who wanted the dispute to be resolved in the Tribunal and continued to maintain that position in their written submissions on costs.

12. However, the Tribunal is not satisfied that the Respondent should be ordered under rule 13(1)(b) to pay the rest of the Applicants' costs for the reasons set out below.

13. The Upper Tribunal considered rule 13(1)(b) in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 0290 (LC). They quoted with approval the following definition from *Ridehalgh v Horsefield* [1994] Ch 205 given by Sir Thomas Bingham MR at 232E-G:

> "Unreasonable" … 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 it is not unreasonable.

14. The Upper Tribunal in *Willow Court* went on to say:

> 24. … 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?
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> 26. We … 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. …

15. The Court of Appeal considered the above cases further in *Lea v GP Ilfracombe Management Co Ltd* [2024] EWCA Civ 1241; [2025] 1 WLR 371. They held that,

    (a) Although a party would have acted unreasonably if their conduct had been vexatious or designed to harass the other party rather than to advance the resolution of the case, there was no requirement that conduct had to be vexatious or oppressive in order for the party to have acted unreasonably, which would place an impermissible gloss on the statutory language and be potentially much too restrictive.

    (b) Since 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 but, subject to that, 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.

16. The Applicants set out a lengthy list of occasions when they say the Respondent acted unreasonably. Some of those relate to events before proceedings started and so are not relevant to rule 13(1)(b) which is limited to behaviour in "defending or conducting proceedings". The Applicants make the following complaints about the Respondent during the proceedings:

    (a) The Respondent made insufficient use of a two-month stay.

    (b) The Respondent conceded some issues only shortly before the hearing.

    (c) The Respondent applied at the start of the hearing to introduce new documents.

    (d) Counsel for the Respondent conducted some unnecessary or irrelevant cross-examination.

    (e) The Respondent relied on hearsay evidence rather than calling the actual maker of the relevant statements.

    (f) The Respondent relied on at least one occasion on "straw man" arguments.

    (g) The Respondent's conduct contributed to the hearing being lengthened beyond its original listing.

17. If these complaints were made out, the Respondent could rightly be criticised but that is not the same thing as having acted unreasonably within the meaning of rule 13(1)(b). There is a reasonable explanation for their actions in each instance. For example, the new documents included emails which only came into existence just before the hearing, it was proportionate to limit the number of witnesses, and counsel genuinely believed that his cross-examination was relevant at all times.

18. The Tribunal is not satisfied that the Respondent acted unreasonably within the meaning of rule 13(1)(b) and so the Applicants' application for their costs is dismissed.

Name: Judge Nicol **Date:** 5th January 2026

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).