



First tier tribunal - a direction on costs awards

THE WINNER TAKES IT ALL?

When costs awards were first introduced into the Tribunal system under Rule 13 many thought that the 'no-costs' jurisdiction had been ended. Those who had the misfortune to deal with Tribunal applications on a regular basis (mainly Landlords) were pleased to be able to put some pressure on uppity leaseholders with the threat of an adverse costs order if it turned out that the application was spurious in nature.

KNOWING ME, KNOWING YOU

Costs awards under Rule 13(1)(b) arise where there has been unreasonable conduct by a party to the proceedings, but until the decisions in *Sinclair v 231 Sussex Gardens Right to Manage Limited* and *Willow Court Management Company (1985) Ltd v Alexander* there had been little guidance on how the rules should be applied particularly where parties to the dispute are unrepresented.

TAKE A CHANCE ON ME

In these 2 cases, the Upper Tribunal (Martin Rodger QC, Deputy Chamber President and Siobhan McGrath, Chamber President, Ft-T(PC)), allowed all of the appeals on costs (setting aside the order for costs in each case). In doing so, they gave the following guidance. Firstly, that the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level. That is, would a reasonable person in the position of the complained of party have conducted themselves that way, and is there a reasonable explanation for the conduct of that person? Secondly, if the answer to the previous questions is no, should an order for costs be made and if so what order?

MAMMA MIA

The Judges found that a party who is acting without legal advice can raise that as a relevant consideration. The application of Rule 13 costs should apply in the ‘clearest of cases’ and not be sought as a matter of course by those who succeed in the dispute. The burden of proving ‘unreasonable conduct’ will always be on the party making the application. Having said that, once the threshold has been reached it is not necessary to find a causal link between the behaviour and costs incurred.

MONEY, MONEY, MONEY

It is good to see some clarity being brought to this area of the rules, but the prospects of obtaining costs in the First Tier Tribunal (Property Chamber) appear to be as remote as ever. It remains to be seen whether the decision will be further appealed.

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This article is not intended to be a full summary of the law and advice should be sought on all issues.

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