Tribunal Procedure Committee

Consultation on possible changes to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 concerning costs in leasehold cases and residential property cases

Questionnaire

We would welcome responses to the following questions set out in the consultation paper. Please return the completed questionnaire by **01 February 2018** to:

Tony Allman-Secretary to the Tribunal Procedure Committee 1st Floor Piccadilly Exchange 2 Piccadilly Plaza Manchester M1 4AH

Email: tpcsecretariat@justice.gsi.gov.uk

Respondent name	Francesca Compton on behalf of the Chancery Bar Association
Organisation	Chancery Bar Association
. **1) Is it appropriate to amend the Property Chamber Rules to include a cap on the award of rule 13(1)(b) costs in residential property cases other than applications under the Mobile Homes Act 1983 or the Caravan Sites and Control of Development Act 1960 (which are the subject of question 3 below)? If so, why? If not, why not? Please provide your reasons.** . **2) If so, in what amount should the cap be? Please provide your reasons.**	
Comments: No, it is not appropriate to amend PC rules to include a cap in residential	

property cases for the following reasons:

1. The reasons why the cap was removed following the Costs in Tribunals (Costs Review Group led by Mr. Justice Warren, December 2011) remain good reasons.
2. There should remain an ultimate costs sanction to discourage litigants from behaving unreasonably.
3. That sanction should also be available in an appropriate case to compensate parties who have incurred costs dealing with unreasonable behavior.
4. The PC has a discretion whether to make an order, and if so, how much. That discretion is subject to the guidance given by the Upper Tribunal in *Willow Court* but otherwise should be unfettered so that the PC is able, in an appropriate case, to make an award which is properly compensatory.
5. The various cases which have been referred to the Upper Tribunal show that the current system is working (see paras 39, 40).
6. There is no evidence within the consultation document of litigants being discouraged from bringing or defending claims for fear of being met with a costs award. The Lord Chancellor's fears, expressed in 2002, were speculative (see para 35). Likewise the current fear of the President of the PC appears to by hypothetical (see para 42).
7. There is now increased awareness of the rights of parties in leasehold and residential property disputes via websites such as https://www.leaseholdknowledge.com https://www.lease-advice.org and http://www.lawandlease.co.uk. With such information freely available it is less likely that threats of applications for costs will affect parties detrimentally.
8. In court proceedings, there has long been a similar costs regime for the small claims track under CPR r27.14 (party who has behaved unreasonably) and before that, arbitrations in the county court under CCR Ord 19 r6 (unreasonable conduct in relation to the proceedings or the claim). It has never been suggested that the absence of a cap on those costs discourages litigation.

. **3) Is it appropriate to amend the Property Chamber Rules to include a cap on the award of rule 13(1)(b) costs in applications under the Mobile Homes Act 1983 or the Caravan Sites and Control of**

Development Act 1960? If so, why? If not, why not? Please provide your reasons.

. **4) If so, in what amount should the cap be? Please provide your reasons.**

Comments:

No, it is not appropriate to amend PC rules to include a cap in applications under the 1983 Act or the 1960 Act for the following reasons:

1. The reasons why the cap was removed following the Costs in Tribunals (Costs Review Group led by Mr. Justice Warren, December 2011) remain good reasons.
2. There should remain an ultimate costs sanction to discourage litigants from behaving unreasonably.
3. That sanction should also be available in an appropriate case to compensate parties who have incurred costs dealing with unreasonable behavior.
4. The PC has a discretion whether to make an order, and if so, how much. That discretion is subject to the guidance given by the Upper Tribunal in *Willow Court* but otherwise should be unfettered so that the PC is able, in an appropriate case, to make an award which is properly compensatory.
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7. There is now increased awareness of the rights of parties in leasehold and residential property disputes via websites such as https://parkhomes.lease-advice.org. With such information freely available it is less likely that threats of applications for costs will affect parties detrimentally.
8. In court proceedings, there has long been a similar costs regime for the small claims track under CPR r27.14 (party who has behaved unreasonably) and before that, arbitrations in the county court under

CCR Ord 19 r6 (unreasonable conduct in relation to the proceedings or the claim). It has never been suggested that the absence of a cap on those costs discourages litigation.

. **5) Is it appropriate to amend the Property Chamber Rules to include a cap on the award of rule 13(1)(b) costs in leasehold cases? If so, why? If not, why not? Please provide your reasons.**

. **6) If so, in what amount should the cap be? Please provide your reasons.**

Comments:

No, it is not appropriate to amend PC rules to include a cap in leasehold cases for the following reasons:

1. The reasons why the cap was removed following the Costs in Tribunals (Costs Review Group led by Mr. Justice Warren, December 2011) remain good reasons.
2. There should remain an ultimate costs sanction to discourage litigants from behaving unreasonably.
3. That sanction should also be available in an appropriate case to compensate parties who have incurred costs dealing with unreasonable behavior.
4. The PC has a discretion whether to make an order, and if so, how much. That discretion is subject to the guidance given by the Upper Tribunal in *Willow Court* but otherwise should be unfettered so that the PC is able, in an appropriate case, to make an award which is properly compensatory.
5. The various cases which have been referred to the Upper Tribunal show that the current system is working (see paras 39, 40).
6. There is no evidence within the consultation document of litigants being discouraged from bringing or defending claims for fear of being met with a costs award. The Lord Chancellor's fears, expressed in 2002, were speculative (see para 35). Likewise the current fear of the President of the PC appears to by hypothetical (see para 42).
7. There is now increased awareness of the rights of parties in leasehold and residential property disputes via websites such as https://www.leaseholdknowledge.com https://www.lease-advice.org

and http://www.lawandlease.co.uk. With such information freely available it is less likely that threats of applications for costs will affect parties detrimentally.

8. In court proceedings, there has long been a similar costs regime for the small claims track under CPR r27.14 (party who has behaved unreasonably) and before that, arbitrations in the county court under CCR Ord 19 r6 (unreasonable conduct in relation to the proceedings or the claim). It has never been suggested that the absence of a cap on those costs discourages litigation.
9. Leasehold disputes sometimes involve very substantial sums of money of the level which would normally be heard in the High Court. It is appropriate that the PC should have a discretion to make a costs award under rule 13 in an appropriate case.

7) If a cap (or caps) is/are appropriate, is it/are they best achieved by drafting in the manner illustrated above?

8) If not, why not? Do you have any other drafting suggestions?

Comments:

If a cap or caps are introduced, the drafting seems to be appropriate

9) Do you have any other suggestions as regards how rule 13(1)(b) costs in these cases should be dealt with in the Property Chamber Rules?

Comments:

No

10) If you consider it appropriate to amend the Property Chamber Rules in the respects you have identified in your answers to the questions above, is it also appropriate to amend the Upper Tribunal (Lands Chamber) Rules likewise? If so, why? If not, why not? Please provide your reasons.

Comments:

No, it is not appropriate to amend the Upper Tribunal (Lands Chamber)

Rules for the same reasons as apply to the PC and are set out in the previous sections of this response. The following additional reasons also apply:

1. If there has been behaviour in relation to an appeal which is unreasonable and which meets the *Willow Court* test for an order under r10(3) of the UT(LC) Rules then it is likely (on an appeal) that the level of the costs will be greater. The requirement for compensation will likely also be greater, and the UT(LC) ought not to be constrained by a cap.
2. There is no reason why a transferred case should be treated differently. If there has been behaviour in relation to a transferred case then the existing PC rules should continue to be applied in accordance with r44A of the UT(LC) Rules.

Generally

11) Do you have any further comment?

Comments:

No.