FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BK/LSC/2018/0044**
Property	:	**Flat 19, 11-20 Southwold Mansions, Widley Road, London W9 2LE**
Applicant	:	**Mr Joe Sykes**
Representative	:	**In person**
Respondent	:	**11-20 Southwold Mansions Limited**
Representative	:	**Emms Gilmore Liberson Solicitors**
Type of application	:	**Application for costs order under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**
Tribunal members	:	**Mr Jeremy Donegan (Tribunal Judge)**
Date of paper determination	:	**09 August 2019**
Date of decision	:	**28 August 2019**

DECISION

Decision of the Tribunal

The Tribunal makes the following costs order under Rule 13(1)(b) (ii) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the 2013 Rules'):

(a) The applicant shall pay 50% of the respondent's costs from 21 May to 14 June 2018, summarily assessed in the sum of £5,326.51 (Five Thousand, Three Hundred and Twenty-Six Pounds and Fifty-One Pence) plus any VAT.

(b) The respondent shall notify the applicant and the Tribunal whether it is VAT registered and able to recover the VAT on its costs, as input tax, by 11 September 2019. The Tribunal will then issue a supplemental decision, specifying the final sum to be paid by the applicant. Payment will be due within 14 days of the supplemental decision.

The Costs Application

(1) This application ('the Costs Application') arises from the Tribunal's decision dated 02 July 2018 ('the 2018 Decision'), made in proceedings under section 27A of the Landlord and Tenant Act 1985 ('the 2018 Proceedings').

(2) The Costs Application was received by the Tribunal on 01 August 2018 but was stayed pending the outcome of the applicant's applications for permission to appeal the 2018 Decision, which were refused by the Tribunal and the Upper Tribunal ('UT'). The applicant then sought permission to apply for Judicial Review, which was refused by the Administrative Court on 05 April 2019.

(3) The relevant legal provisions are set out in the appendix to this decision.

The background and procedural history

(4) The applicant is the long leaseholder of Flat 19, 11-20 Southwold Mansions, Widley Road, London W9 2LE ('the Flat'). The respondent is the freeholder of 11-20 Southwold Road ('the Block'), which is a terraced, mansion block containing 10 flats. The Block has been managed by Burlington Estate Management Limited ('Burlington') since January 2017.

(5) The background is largely set out in the 2018 Decision. Prior to the 2018 Proceedings, there had been four sets of previous proceedings before the Leasehold Valuation Tribunal ('LVT') and First-tier Tribunal ('FTT'); all of which concerned service charges for the Flat. The most recent had been withdrawn by the applicant on 16 September 2016, pursuant to a compromise agreement.

(6) In the 2018 Proceedings, the applicant sought a determination of interim (advance) service charges and reserve fund contributions for the year ended 24 December 2017 and for the year ending 24 December 2018. In his statement of case dated 15 April 2018, he sought 8 "*orders*" relating to these charges/contributions.

(7) The 2018 Proceeding were listed for hearing on 14 June 2018. On 21 May the applicant submitted an application for the appointment of a manager for the Block, pursuant to section 24 of the Landlord and Tenant Act 1987 ('the 1987 Act'). In his covering letter to the Tribunal, he sought a postponement of the hearing so both applications could be heard together. The section 24 application was returned as it was incomplete and the postponement request was refused [see paragraph 11 of 2018 Decision].

(8) Two days before the hearing, the applicant filed a supplemental bundle of documents [paragraph 12 of the 2018 Decision]. He then filed a witness statement, list of trial issues and skeleton argument. The latter conceded an issue raised in the section 27A application and his statement of case, relating to the management fees at the Block. The applicant had previously contended that these fees could not exceed 10% of the service charge demanded in each year. At paragraph 2.3 of his skeleton argument, he stated "*Management fees are not subject to a 10% limit…This point is not pursued. For completeness, it was derived from the previous agent's and other agents' approach but is superceded by disclosure of BEL's contract with R in its hearing bundle…*".

(9) At the start of the hearing the Tribunal identified five 'live' issues for determination [paragraph 29 of 2018 Decision]:

"*(a) Whether the Interim Charges for the year ended 24 December 2017 are payable;*

(b) Whether the Interim Charges for the year ending 25 December 2018 are payable;

(c) Whether a Reserve Fund contribution of £11,363.57, demanded on 09 February 2016, is payable;

(d) Whether the Reserve Fund Contribution of £2,500 for June to December 2017 is payable; and

(e) Whether the Reserve Fund Contributions of £2,500 for December 2017 to June 2018 is payable."

(10) One of the applicant's grounds for disputing the 2017 and 2018 service charges, as detailed in his section 27A application and his statement of case was that no certified accounts had been produced. By the time of the hearing, he had abandoned this argument. This was unsurprising, given the application concerned interim service charges. These are not contingent upon the

production of accounts, under the terms of the lease. At the hearing, the applicant argued that the interim charges were not payable, as he did not receive demands until January 2018 and only received the relevant service charge budgets after the 2018 Proceedings commenced. The Tribunal determined that the interim charges were payable in full. It accepted the evidence of the respondent's witness, Ms Clifford that the demands and budgets had been sent timeously [see paragraph 52 of 2018 Decision]. It did not have to decide if these documents had been validly served, as the applicant accepted he had received them by the time of the hearing. Further, he paid the interim charges prior to the hearing and agreed the figures during the course of the hearing.

(11) The 2016 reserve fund contribution of £11,363.53 had been agreed by the applicant as part of the 2016 compromise agreement and he withdrew this issue during the course of the hearing [paragraph 63 of 2018 Decision]. The only other issues were the reserve fund contributions for June to December 2017 and December 2017 to June 2018. These two issues took up approximately half the hearing, which started at 10.25am and finished at 3.40pm. The Tribunal found in favour of the respondent and allowed each contribution (£2,500), in full [paragraph 76 of the 2018 Decision].

(12) Directions were issued on the Costs Application on 02 May 2019. These provided for paper determination unless either party requested an oral hearing by 30 May. Neither party requested an oral hearing and the paper determination took place on 09 August 2019.

(13) The respondent's solicitors produced a determination bundle, pursuant to the directions. The initial bundle was incomplete and a revised version was produced at the Tribunal's request. The bundle included the Costs Application, which runs to 14 pages and 7 appendices, the applicant's response (35 pages and authorities) and the respondent's reply (2 pages). These are summarised at paragraphs 26-57, below.

(14) When deciding the Costs Application, the Tribunal considered the various documents in the revised bundle, an email from the applicant dated 02 August 2018 (with photographs of the exterior of Southwold Mansions) and a complaint to the Solicitors Disciplinary Tribunal ('SDT'), which has been referred to the Solicitors Regulation Authority ('SRA'). It also reviewed the relevant documents in the hearing bundles from the 2018 Proceedings.

The law

(15) The respondent seeks a costs order under rule 13(1)(b) of the 2013 Rules. It alleges that the applicant acted unreasonably in the 2018 Application. It does not seek an order for wasted costs under rule 13(1)(a).

(16) Rule 13(1)(b) is engaged where a party has acted "*…unreasonably in bringing, defending or conducting proceedings…*". The Tribunal's power to award costs

is derived from section 29(1) of the Tribunals, Courts and Enforcement Act 2007 ('the 2007 Act'), which provides:

"*(1) The costs of and incidental to –*
(a) all proceedings in the First-tier Tribunal, and
(b) all proceedings in the Upper Tribunal,
shall be in the discretion of the Tribunal in which the proceedings take place."

It follows that any rule 13(1)(b) order must be limited to the costs of and incidental to the proceedings before this Tribunal, namely the 2018 Proceedings.

(17) Rule 3(1) of the 2013 Rules provides that "*The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly."* This extends to *"dealing with the case in ways that are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal"* (rule 3(2)(a)).

(18) Not surprisingly, both parties referred to the UT's decision in ***Willow Court Management Co (1985) Ltd v Alexander [2016] UKUT 290 (LC),*** which outlined a three-stage test for deciding rule 13 applications. 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 and there need not be a causal connection between the unreasonable conduct and the costs incurred. Given the requirements of the three stages, rule 13 applications are fact sensitive.

(19) At paragraph 20, the UT referred to the leading authority on wasted costs, ***Ridehalgh v Horsefield [1994] Ch***, where Sir Thomas Bingham MR considered the expressions "*improper, unreasonable or negligent*" and said:

""Improper" means what it has been understood to mean in this context for at least half a century. The adjective covers, but is not confined to, conduct which would ordinarily be held to justify disbarment, striking off, suspension from practice or other serious professional penalties. It covers any significant breach of a substantial duty imposed by a relevant code of professional conduct. But it is not in our judgment limited to that. Conduct that would be regarded as improper according to the consensus of professional (including judicial) opinion can be fairly stigmatised as such whether or not it violates the letter of a professional code."

"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."

(20) At paragraph 24 of ***Willow Court***, the UT 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?"*

(21) At paragraph 26, the UT 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."*

(22) 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 UT referred to ***Cancino v Secretary of State for the Home Department [2015] UKFTT 00059 (IAC)***, which concerned a corresponding cost rule in the Immigration and Asylum Chamber. At paragraph 26 of ***Cancino*** the UT gave the following guidance:

"First, the conduct of litigants in person cannot normally be evaluated by reference to the standards of qualified lawyers. Thus the same standard of

reasonableness cannot generally be applied. On the other hand the status of unrepresented litigants cannot be permitted to operate as a carte blanche to misuse the process of the tribunal. The appropriate balance must be struck in every case. In conducting this exercise, tribunals will be alert to the distinction between pursuing a doomed appeal in the teeth of legal advice and doing likewise without the benefit thereof… Stated succinctly, every unrepresented litigant must, on the one hand be permitted appropriate latitude. On the other hand, no unrepresented litigate can be permitted to misuse the process of the tribunal. The overarching principle of fact sensitivity looms large once again."

(23) At paragraph 43 of ***Willow Court***, the UT 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."*

(24) The applicant was unrepresented in the 2018 Proceedings and is unrepresented in the Costs Application. He is a litigant in person ('LIP') but does have legal knowledge and works as an advocate for Fleet Street Advocates. In an email to the respondent's solicitor dated 22 May 2018 he described himself as "*a litigator*". At the 2018 hearing he referred to his extensive professional experience of appearing in other courts and tribunals [see paragraph 21 of the 2018 Decision]. In his response to the Costs Application, he described himself as "*a non-qualified, lay consultant in employment*" and "*an experienced employment law advocate"* but *"not a residential or commercial property solicitor or barrister"*. In terms of the 2018 Proceedings he was "*at best an educated layman*" and his "*actual role in the proceedings was as an unrepresented lessee concerned about maintenance of his block, and the service charges being reasonable*." In its reply, the respondent stated "*Whilst the Applicant states that he is unqualified and is not a litigation solicitor or barrister, he has been a qualified barrister and continues to practice as Fleet Street Advocates.*"

(25) The applicant's legal experience is addressed further at paragraphs 75, 82 and 89, below.

<u>The respondent's application</u>

(26) The application was settled by counsel, Mr Niraj Modha who had appeared at the 2018 hearing. He submitted that the applicant had acted unreasonably in four respects.

(27) Firstly, the applicant had persisted with a hopeless case despite several warnings from the respondent. In particular:

(a) He sought a determination of the reserve fund contribution demanded on 09 February 2016 (£11,363.57), despite agreeing this issue in the 2016

compromise agreement. The Tribunal had no jurisdiction to determine this issue, which was an abuse of process.

(b) He disputed the payability of the management fees, despite this matter having been determined in the earlier FTT proceedings.

(c) He argued that interim service charges should be certified despite there being no provision for this in the lease and this issue having been determined in the earlier proceedings.

(d) He pursued misconceived arguments over the certification of the 2017 and 2018 accounts.

(e) He challenged service of the 2017 and 2018 interim demands despite this point being academic and pointless. At the very latest, he had received and paid the demands by 16 January 2018 before the 2018 Proceedings were issued.

(f) All of his arguments regarding the costs of the major works were irrelevant to the Tribunal's determination, as these costs had not been incurred. The works had only recently begun (post application) at the time of the hearing.

(g) The only effective, live issue at the hearing was the reasonableness of the reserve fund contributions for 2017 and 2018.

The applicant conceded or withdrew points (a) to (d), either just before or at the hearing.

(28) Secondly, the applicant had breached the Tribunal's directions and these breaches and his failure to cooperate with the respondent amounted to a breach of the overriding objective at Rule 3 of the 2013 Rules. The directions were issued on 12 February 2018 and Mr Modha identified the following breaches:

(a) The applicant's statement of case was due by 29 March 2018 but was not served until 15 April, following a late application for an extension on 12 April. The Tribunal granted a four-day extension and varied the directions on 13 April [see paragraph 10 of 2018 Decision].

(b) The applicant prevaricated when the respondent tried to agree the contents of the hearing bundles. The draft index was sent to the applicant on 18 May 2018 but he failed to agree the same and then produced his own supplementary bundle.

(c) The applicant failed to serve his reply in time. It was served in two parts on 08 and 13 June 2018 and he only served his witness statement at 21.23 on 12 June. These should have been served by 28 May.

(d) The applicant's bundle was served on 12 June 2018, only two days before the hearing and he only provided the respondent with one copy. The varied directions provided for service of two copies by 29 May.

(e) The applicant failed to respond to a detailed email (from Ms Rachel Clifford of Burlington) dated 22 February 2018, which attempted to narrow or resolve the issues in dispute. When chased, the applicant commented "*Your paperwork and position adopted are unsatisfactory and deceptive…The case proceeds*". This was contrary to a direction that the parties should meet or communicate with each other by 26 February, with a view to settling the dispute or narrowing the issues.

Mr Modha also submitted "*That the Applicant's torrential style of correspondence and misplaced criticism is further evidence of his unreasonableness*."

(29) Thirdly, the applicant conducted himself unreasonably in relation to without prejudice discussions. He made an offer to settle on 11 May 2018, which did not deal with the entirety of the dispute and was conditional upon the withdrawal of the 2017 and 2018 reserve fund demands. Further the tone of his without prejudice correspondence was "*argumentative and condescending*" and he copied a without prejudice email chain to the Tribunal having removed the 'without prejudice' heading.

(30) Finally, the applicant had acted unreasonably in threatening and then submitting a disingenuous and disruptive application under section 24 of the 1987 Act. His request to postpone the 2018 hearing generated additional correspondence in the 2018 Proceedings. Further, the section 24 application and preceding section 22 notice were an attempt to intimidate the respondent into conceding its strong and clear arguments.

(31) As to the second limb in ***Willow Court***, Mr Modha relied on a letter from the respondent's solicitors dated 18 May 2018. This warned the applicant of the intention to seek a costs order. The applicant had many opportunities to disavow those issues that were doomed to failure. Had he made reasonable concessions and approached the proceedings reasonably then this could have reduced both the length of the 2018 hearing and the preparation time.

(32) As to the third limb, Mr Modha invited the Tribunal to summarily assess the costs on the standard basis. A statement of costs with supporting invoices and fee notes was appended to the Costs Application. The total sum claimed is £34,944.61, including VAT where appropriate, which is broken down as follows:

- Solicitors' costs — £23,700 plus VAT (total £28,440)
- Counsel's fees — £5,000 plus VAT (total £6,000)

- Disbursements subject to VAT £415.51 plus VAT (£498.61)

- Land Registry fees (no VAT) £6

The hourly rates claimed for the solicitors were £250 (Grade A) and £175 (Grade C) and the costs statement summarised the fee earners' time, split between attendances and work done on documents. Mr Modha's brief fee for the June 2018 hearing was £4,500 and there was an additional fee of £500 (both plus VAT) for drafting the Costs Application.

The applicant's response

(33) The applicant addressed Rule 13(1)(b) and ***Willow Court*** at some length. He submitted that the Tribunal could only find he behaved unreasonably if his conduct was designed to harass the respondent, instead of advancing his case. Incompetence or misconception would not meet this threshold and the correct question is whether the case was unreasonably brought or litigated. The applicant also pointed out that the term 'misconceived' does not appear in Rule 13(1)(b).

(34) As to the 'hopeless case' points, the applicant accepted some of the respondent's criticisms. Whilst it was unreasonable to pursue the 2016 Reserve Fund contribution, having previously agreed this issue, he was concerned with the timing of the demand as the front elevation works had not commenced. Further, this was only a minor part of the case. The applicant described his challenge to the cost of the front elevation works and his complaint about the absence of Interim Service Charge demands (for sums already paid) as "*technically misconceived*". However, little time was spent on the former and the use of hearing time on the latter was not unreasonable, as the Tribunal determined the interim service charges. Further, the respondent failed to mitigate by taking any steps to reduce its costs, including applying to strike out parts of the case before the hearing or seeking to agree a list of issues.

(35) The applicant suggested it was inappropriate and excessive to describe his technically misconceived points as abuse of process. Further, abuse of process is not an issue within Rule 13(1)(b).

(36) The applicant pointed out that the amount of the management fees was not one of the five issues identified at the June 2018 hearing. It was not unreasonable to include this in the section 27A application, as he had not seen the management contract at that stage. As to certification of service charges, he suggested the respondent had confused the position. His complaint related to self-certification for final, rather than interim, charges and his statement of case specifically referred to "*no certification of service costs for 2017 by an accountant*". The self-certification point had been decided in his favour in

previous tribunal proceedings and it appeared that the 2017 and 2018 accounts had been self-certified, contrary to the lease.

(37) The applicant submitted that the respondent had sought to mislead the Tribunal, regarding the major works. Paragraph 18 of the Costs Application referred to compliance "*with the statutory consultation procedure for part of the major works*". The evidence from the respondent's witness, Ms Clifford, was that works to the front elevation had been delayed "*because the agents were told verbally that the cost would be an additional £150,000.*" The applicant suggested this was false, as these works commenced on or about 01 July 2018, shortly after the hearing. This was apparent from the photographs submitted to the Tribunal following the hearing, which showed scaffolding to the front elevation.

(38) The 2017/18 reserve fund demands were the main live issue at the hearing, as acknowledged by the respondent. This was a pure issue of fact, with disputes over the principle of a reserve and the amount of the contributions. It was decided against the applicant but costs do not follow the event in the Tribunal and it was not unreasonable to bring this issue.

(39) The respondent failed to narrow the issues at the directions stage, before the hearing or at the hearing. Rather; it was content to let the full case proceed to a hearing. It was the Tribunal Judge who refined the issues at the hearing; which the respondent accepted without demur.

(40) Most of the applicant's case raised issues of fact and the misconceived points were withdrawn at the hearing. The respondent has not established that any unreasonable conduct increased the duration of the hearing or costs. Nor has it established the applicant's conduct was unreasonable as it harassed the respondent. With the exception of the points admitted as misconceived, the Rule 13(1)(b) challenge fails.

(41) As to the alleged breaches of directions, the respondent had not shown any prejudice or increase in its costs. The applicant's statement of case was only a few days late. The problems with the hearing bundles were of the respondent's making. It produced bundles, despite this being the applicant's responsibility under the directions, which omitted a number of relevant documents. The applicant was obliged to prepare a supplemental bundle, which the Tribunal admitted at the June 2018 hearing. Further, the respondent's assertion that it tried to narrow or resolve the issues was false. Its correspondence was hostile and did not encourage compromise. It did not produce a draft order or list of final issues for agreement and it failed to address the applicant's real concerns about the maintenance of the Block.

(42) The applicant submitted that he only issued the 2018 Proceedings, as the respondent had breached the 2016 compromise agreement by failing to refurbish the Block in 2017. Whilst a minor part of the section 27A application might have been misconceived in the application of service charge theory, this had not explained by the respondent's legal team.

(43) Further, the "*torrential style of correspondence and misplaced criticism*" description actually applied to the respondent's skeleton argument and submissions.

(44) In relation to negotiations, the applicant was the only party to make a substantive offer (in his email of 11 May 2018). The respondent could have addressed any omissions in a counter-offer but none was forthcoming. The case could have settled, given its lack of complexity and the nature of the issues. The failure to do so was down to the respondent. Further, the criticism of the applicant's tone (in the without prejudice correspondence) was not supported whereas the respondent's style was "*dismissive and arrogant throughout*."

(45) The section 24 application was not brought to vex and covered much of the same material as the section 27A application. It was not unreasonable to seek the removal of the managing agents, given their various failings. These included the abandonment of the front elevation works that should have commenced in January 2017; for which the respondent was responsible.

(46) As to the second limb in ***Willow Court***, the applicant stressed that the Tribunal must look at all the circumstance when deciding whether to exercise its discretion. He accepted the respondent made "*a standard costs warning*" (in their letter of 18 May 2018). However, there was no detail explaining why his case would fail, In particular, there was no explanation in "*non-hostile, non-dismissive, conciliatory terms*". Further, there was no constructive attempt to narrow the issues and no counter-offer.

(47) The applicant referred to a "*lease provision*" that management fees could not exceed 10% of service charges but did not identify the clause/s in question. He agreed to pay these fees after disclosure of the management contract when he discovered "*an agreement to pay fees higher than provided for in the lease*".

(48) The applicant reiterated that:

- his communications had not been aggressive;
- the bulk of the hearing was concerned with questions of fact and the misconceived points had little impact on preparation time or length of the hearing; and
- the respondent had not identified any prejudice arising from his late compliance with the directions, failed to put forward draft proposals and was hostile and dismissive towards him.

He described Mr Modha's skeleton argument as "*verbally violent and offensive*" and complained that it had been produced "*at the last minute*".

(49) The applicant relied on the Court of Appeal's decision in ***Barnsley Metropolitan Borough Council v Yerrakalva [2011] EWCA Civ 1255***, which considered costs order under Rule 40 within Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations, which have since been replaced. At paragraph 41 of his judgment, Mummery LJ said:

"*The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the claimant in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects it had. The main thrust of the passages cites above from my judgment in McPherson was to reject as erroneous the submission to the court that, in deciding whether to make a costs order, the ET had to determine whether or not there was a precise causal link between the unreasonable conduct in question and the specific costs being claimed. In rejecting that submission I had no intention of giving birth to erroneous notions, such as that causation was irrelevant or that the circumstances had to be separated into sections and each section to be analysed separately so as to lose sight of the totality of the relevant circumstances.*"

(50) The applicant submitted that his misconceived points were explicable, as the acts of an LIP. This could be contrasted with the respondent's unreasonable conduct in attempting to deceive, and deceiving the Tribunal in relation to the works to the front elevation. Having regard to ***Yerrakalva***, this deception extinguished any right to a costs order.

(51) As to stage three of ***Willow Court***, the applicant submitted that the respondent's costs (c£34,000) were grossly disproportionate, being more than 400% of his valuation of the 2018 Proceedings (£7,500). He relied on the proportionality requirements at Part 44.3(5) of the Civil Procedure Rules ('CPR') and the case law summary in ***May v Wavell Group Plc [2016] unrep.***, cited in the White Book. The former provides:

"*(5) Costs incurred are proportionate if they bear a reasonable relationship to –*

(a) the sums in issue in the proceedings;

(b) the value of any non-monetary relief in issue in the proceedings;

(c) the complexity of the litigation;

(d) any additional work generated by the conduct of the paying party;

(e) any wider factors involved in the proceedings, such as reputation or public importance."

(52) The applicant also relied on the respondent's bill from previous FTT proceedings in 2015/16, stated to be £6,000. The costs now being claimed are 550% of this figure. The applicant suggested the earlier proceedings involved substantially more work.

(53) The applicant attributed this increase to the respondent "*hiring much more expensive lawyers*". The solicitors "*created work*" and the legal team "*took every point*" and ran the case "*for all it was worth*". He also suggested that the hearing bundles were "*extraordinarily padded*", yet omitted "*potentially adverse documentation*". His quantum submissions were general in nature and there were no specific challenges to the times claimed for the solicitors' attendances. Further, there was no to the solicitors' hourly rates. The applicant did take issue with "*counsel's vastly excessive fee of £3,000 for a short submission short on detail and marked by errors and omissions*" but this figure is incorrect. Mr Modha's fee for drafting the Costs Application was actually £500 plus VAT.

(54) The applicant's starting point was that no costs award should be made due to the respondent's "*unreasonable conduct in misleading the Tribunal to find the £15,000* ***sic*** *was real and the front elevation interior and exterior works were actually split. Further that the service charges were served on the date on their face, when the agents are still not serving demands on the Applicant*." Alternatively, the starting point should be the value of the 2018 Proceedings and the costs in the previous FTT case. The applicant suggested that any costs order should be limited to £2,000, representing £6,000 less 50% for the respondent's unreasonable conduct and a further deduction of £1,000 given his misconceived points were "*educated LIP errors*". He could only accept summary assessment on this basis and if the Tribunal disagreed, the case "*must go to detailed assessment*."

The respondent's reply

(55) The respondent took issue with the applicant's response but relied on the contents of the Costs Application; rather than replying point by point. However, it did stress that it had attempted to explain the issues to the applicant on a number of occasions. This included Ms Clifford's email of 22 February 2018; to which there was no substantive response. The respondent took exception to the inference it had allowed the case to proceed to a full hearing to increase costs; pointing out there was no criticism of its conduct in the 2018 Decision. Further, it had tried to keep its costs as low as possible knowing that its ability to recover any costs was at the discretion of the Tribunal.

(56) The respondent suggested the applicant had "*far more experience and knowledge of the litigation process than a lay person would have*", as evidenced by the drafting of his pleadings, including the response to the Costs Application.

(57) The respondent submitted that the pursuit of misconceived points could amount to unreasonable conduct of proceedings and this is a matter for the

Tribunal's discretion. The misconceptions in this case were serious and, when looked at overall, the applicant's conduct of the 2018 Proceedings was unreasonable.

The applicant's complaint to the SDT

(58) The applicant submitted two statements under Rule 5 of the Solicitors Disciplinary Proceedings Rules) 2007, dated 21 and 22 July 2019. These require Dakeyne Emms Gilmore Liberson Limited (the full company name of the respondent's solicitors) and Helena Bannister (the individual solicitor) to answer various allegations. The applicant complained of "*two false representations*" made in the respondent's statement of case and Ms Clifford's witness statement from the 2018 Proceedings. The first relates to works to the rear elevation and roof, which were said to be deferred due to lack of funds. The second related to an informal estimate of £150,000, for the total cost of the external works, from Harris Associates Limited.

(59) On 24 July 2019 the SDT issued a Memorandum of Consideration of Lay Application. At paragraph 3 it said "*The matters raised were potentially serious. A Tribunal expected a Lay Applicant to have first sent their complaint, or to have made a report, to the SRA which was the body tasked with regulating solicitors and their firms*." The SDT concluded that the complaint warranted further investigation by the SRA and gave the following directions at paragraph 5:

"*5.1 The Tribunal's administrative office is to provide the Lay Application to the SRA for investigation of the complaint made.*

5.2 By 4.00pm. on 23 October 2019, the SRA is to respond to the Lay Applicant and to the Tribunal with the results of the investigation, including reasons for not taking the case further (if that is the outcome) and any future steps planned by the SRA."

(60) The applicant has not informed the Tribunal of any response from the SRA. This is unsurprising, given the 23 October 2019 deadline is almost two months off.

<u>The Tribunal's decision</u>

(61) The applicant shall pay 50% of the respondent's costs of the 2018 Proceedings from 21 May to 14 June 2018, summarily assessed in the sum of £5,326.51 (Five Thousand, Three Hundred and Twenty-Six Pounds and Fifty-One Pence plus any VAT, pursuant to rule 13(1)(b)(ii) of the 2013 Rules.

(62) The respondent shall notify the applicant and the Tribunal whether it is VAT registered and able to recover the VAT on its costs, as input tax, by 11 September 2019. The Tribunal will then issue a supplemental decision, setting out the final sum to be paid by the applicant. Payment will be due within 14 days of the supplemental decision.

Reasons for the Tribunal's decision

(63) The threshold for making a Rule 13(1)(b) costs order is a high one. As stated at paragraph 24 of ***Willow Court*** "*…the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level.*"

(64) The Tribunal first considered whether the respondent had acted unreasonably in conducting the 2018 Proceedings. When doing so, it only considered the period from 29 January 2018, being the date of the section 27A application, until the conclusion of the hearing on 14 June 2018. The applicant's conduct outside this window is not relevant, as the Tribunal is only concerned with the conduct of the proceedings rather than the underlying dispute.

(65) Before commenting on the respondent's conduct, it is appropriate to address his criticisms of the respondent and his allegations of deception.

(66) The applicant complained that the respondent's style was "*hostile, dismissive and arrogant throughout*". This is not borne out by the correspondence or documents in the hearing and determination bundles. The correspondence from Burlington and the respondent's solicitors was professional throughout. The solicitors complained about the late service of documents and breaches of directions but this was factually correct and entirely reasonable. It was also reasonable to warn the applicant of the proposed Rule 13 application, in their letter of 18 May 2018.

(67) The applicant also complained that the respondent's solicitors acted unreasonably in contesting all issues through to the 2018 hearing. Again, there is no basis for this complaint. The applicant failed to concede his misconceived points until the hearing (or just before) and the respondent had no choice but to contest these points. It was entirely reasonable for the solicitors to mount a vigorous defence to all issues raised by the applicant. This approach was vindicated by the outcome of the case. The respondent was wholly successful in that every issue raised was either conceded or decided in its favour. Given this outcome, it cannot be said that respondent's solicitors acted unreasonably in their approach to the proceedings.

(68) The criticism of Mr Modha is also unfounded. There was nothing in his skeleton argument or in his oral submissions that was unreasonable. Further, the points raised in the Costs Application were justified and well made. The applicant suggested that paragraph 18 was misleading, as it referred to works having "*only recently begun (post-application)*". This was clearly a reference to the

internal works that commenced in May 2018 [see paragraph 59 of the 2019 Decision]; rather than any external works. It was not misleading.

(69) The applicant alleges that the respondent deceived the Tribunal at the 2018 hearing. This is an extremely serious allegation, which should only be made if supported by convincing evidence. The applicant relies on photographs showing scaffold at the front of the Block in early July 2018. This suggests that some work was being undertaken to this elevation, which may be at odds with the respondent's stated intention to defer external works until sufficient reserves had been collected [see paragraph 68 of 2018 Decision]. However, the Tribunal has not been told why the scaffold was erected or given any details of the works to the front elevation (if any). The photographs, on their own, do not establish any deception.

(70) The applicant also alleges that false representations were made in the respondents' statement of case and Ms Clifford's witness statement, as detailed in his complaint to the SDT. This complaint is to be investigated by the SRA and it would be inappropriate for the Tribunal to make any findings or comment on these allegations. However, it does note that the SDT complaint was made in late July 2019; more than a year after the 2018 Decision. The applicant has not given any explanation for this delay.

(71) 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".

(72) 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. Ms Clifford sent a detailed email to the applicant on 22 February 2018. This explained that:

- the 2017 end of year accounts were yet to be prepared and should be served in June 2018;
- there is no lease requirement to certify service charge budgets; and
- she could not see any lease provision capping the management fee at 10% of the total service charge and there is no "*limitation in statute or best practice on the percentage which may be charged*". Ms Clifford also asked the applicant to direct her to the lease clause on which he relied.

(73) The respondent's statement of case and Ms Clifford's witness statement were sent to the applicant (by email and post) on 11 May 2018. The former explained that:

- the FTT had determined that certification was not required for interim (or supplementary) service charge demands in previous proceedings;
- there is no lease obligation to serve interim service charge accounts;
- the 2017 and 2018 end of year accounts were yet to be produced;
- management fees had been determined in previous proceedings and the lease does not limit the amount of these fees; and
- the 2016 reserve fund contribution had been agreed in previous proceedings and could not be re-litigated.

Further clarification was provided in Ms Clifford's statement. The respondent's solicitors then threatened a Rule 13 application, based on unreasonable conduct, in their letter to the applicant dated 18 May (sent by email and post). That letter referred to him "*reopening the 2018 settlement agreement despite confirming to the Tribunal at that time that you would not reapply to the Tribunal in relation to that issue*."

(74) By 18 May, the applicant had received at four documents spelling out weaknesses in his case (Ms Clifford's email and witness statement, the statement of case and the 18 May letter). Given the contents of these documents it should have been obvious that three of his points were wholly misconceived (certification of service charge account and demands, the alleged cap on management fees and the attempt to reopen the 2016 reserve fund contribution).

(75) The applicant is a LIP and is not a property lawyer. However, he is a litigator and experienced employment advocate with legal experience and knowledge. This was borne out by the drafting of his detailed statements of case and written submissions. In particular, his response to the Costs Application included lengthy analysis of Rule 13, ***Willow Court*** and the law on proportionality. Further, the applicant has been a party to four previous sets of proceedings before the LVT/FTT and is familiar with the Tribunal's procedure. Given this experience and knowledge, it should have been obvious by 18 May 2018 that these three points were wholly misconceived and bound to fail. They cannot be explained away as the acts of a LIP. It was unreasonable for the applicant to continue with these points after 18 May.

(76) The applicant's continued challenge to the 2016 reserve fund contribution was an abuse of the Tribunal's process, as he was seeking to re-litigate an issue agreed in previous proceedings. This abuse also amounted to unreasonable conduct.

(77) It was also unreasonable for the applicant to continue with his lease points (certification of accounts and demands and the 10% cap on management fees),

in the light of the previous LVT and FTT decisions. Bizarrely, he repeated the 10% cap argument in his response to the Costs Application, despite abandoning this point in the 2018 Proceedings. The applicant has not identified any lease clause imposing such a cap. Based on the Tribunal's reading of the lease, no such clause exists.

(78) The applicant sought to blame the respondent for his continued pursuit of misconceived points, saying it should have narrowed the issues and applied to strike out parts of his case. However, the respondent did clarify the issues in the documents referred to at paragraphs 72-74, above. Further, an application to strike out would have meant an additional hearing and generated further work and costs. The most cost effect effective approach deal with all issues (if none were conceded) at the final hearing. The respondent was not to blame for the applicant's unreasonable pursuit of the misconceived points.

(79) In ***Cancino***, cited in ***Willow Court***, the UT said "*the status of unrepresented litigants cannot be permitted to operate as a carte blanche to misuse the process of the tribunal.*" It then went on to say *"The overarching principle of fact sensitivity looms large once again."* On the facts of this case, including the applicant's legal experience and knowledge, it was unreasonable for him to continue with these three points after 18 May.

(80) It was also unreasonable for the applicant to seek a determination of the 2016/17 and 2017/18 interim service charges, given he had received copies of the demands and budgets by the time of the 2018 hearing, had paid these demands and then agreed these charges at the hearing. At the very latest he received copies of the demands by 16 January 2018. Further, he had received at least one budget (if not both) by the time he drafted the section 27A application on 29 January 2019 [see paragraph 53 of 2018 Decision]. The demands were paid on 30 November 2017, 28 and 29 January 2018, respectively [paragraphs 42 and 43]. This issue was also misconceived.

(81) Although the Tribunal determined that the 2017/18 reserve contributions were payable it was not unreasonable for the applicant to challenge these, given the delay in the external works. These issues were largely decided on the factual evidence from the applicant and Ms Clifford.

(82) The applicant acted unreasonably and contrary to the overriding objective in his repeated breaches of the directions, namely

- failing to engage with Ms Clifford's attempt to narrow the issues, as set out in her detailed email of 22 February 2018, by the 26 February deadline (or at all);

- failing to serve his statement of case (or applying for an extension) before the 12 April 2018 deadline;

- failing to serve his reply and witness statement before the 28 May 2018 deadline;

- failing to engage with the respondent over the preparation of the hearing bundles; and

- failing to serve his bundle of documents before the 29 May 2018 deadline and only supplying the respondent with one bundle.

Directions must be complied with. If a party cannot comply then he should first seek an extension from his opponent, giving his reasons. If this is not forthcoming then he should make an application to the Tribunal (before the relevant deadline). The applicant did neither of these things and took a cavalier approach. He did not respond to Ms Clifford's email until 11 April when he dismissed her position as "*unsatisfactory and deceptive*". His extension application for the statement of case was not made until 12 April, 14 days after the 29 March deadline and no application was made in respect of his reply, witness statement or bundle. Given the applicant's experience as a litigator and employment advocate, he must have been aware of the importance of the directions and the consequences of non-compliance.

(83) In relation to the bundles, the respondent's solicitors stated they would produce a draft index for the applicant to approve in their letter of 11 May 2018. They sent him the draft index on 18 May and asked him to agree it by 22 May, failing which it would prepare its own bundles. This was entirely reasonable, given the proximity of the hearing and the 29 May deadline for the bundles. It was the applicant's failure to engage with the respondent over the preparation of joint bundles that necessitated separate bundles.

(84) The applicant submitted that his non-compliance with the directions did not amount to unreasonable conduct, as the delays were modest and the respondent had not identified any prejudice. The delays were significant in the context of the timetable imposed by the directions and varied directions. The applicant's statement of case was served 17 days late, his reply was served in two parts with the second part 16 days late, his witness statement was 15 days late and his bundle was 14 days late. Crucially, his statement and bundle were only served just before the hearing. This meant the early part of the hearing was taken up with the application to admit these documents.

(85) The question of prejudice and the consequences of the applicant's non-compliance should properly be considered at stages two and three of ***Willow Court***; rather than stage one (see paragraphs 91-96, below).

(86) The applicant's conduct in the without prejudice discussions was not unreasonable, save in one respect (see paragraph 87, below). The tone of his correspondence was confrontational but he did make two settlement offers. There was the conditional offer made on 11 May 2018 and then a revised offer on 12 June. Both offers were unrealistic, given the outcome of the case but the

applicant did try to settle. Further, he expressed a willingness to mediate. No offers or counter-offers were made by the respondent.

(87) The applicant has not explained why he disclosed the without prejudice email chain to the Tribunal or the removal of the without prejudice heading. In the absence of an explanation, the Tribunal find this was unreasonable.

(88) The applicant also acted unreasonably by serving the preliminary notice under section 22 of the 1987 Act. This was dated 01 May 2018 and complained of the very issues to be determined in the 2018 Proceedings. It only gave the respondent 7 days to remedy the alleged failings and was clearly designed to harass and intimidate. It was also unreasonable for the applicant to submit the section 24 application on 21 May, only 24 days before the hearing and to use this to seek a postponement. The application was incomplete and was returned by the Tribunal [see paragraph 11 of 2018 Decision]. It was not resubmitted, which suggests it was a tactical device to try and delay the hearing.

(89) The applicant acted unreasonably in his conduct of the 2018 Proceedings, in three different ways (misconceived points, breaches of directions and the 1987 Act notice and application). This conduct cannot be explained away as the acts of a LIP. The applicant is a litigator and experienced employment advocate with previous Tribunal experience. He should have known better.

(90) Having found unreasonable conduct, the Tribunal then considered whether to make an order for costs. When doing so, it had regard to all relevant circumstances, including the applicant's lack of representation and the previous proceedings between the parties. The 2018 Proceedings were the fifth set of proceedings between the parties. Some of the applicant's complaints had been addressed in the previous proceedings and he had agreed the 2016 reserve contribution in an earlier case.

(91) The applicant's continued pursuit of the misconceived issues after 18 May 2018 extended the length of the hearing and Mr Modha's preparation time. Had he limited the issues to the 2017/18 reserve contributions then the parties could have focused on these two issues and the hearing could have concluded in half a day.

(92) The breaches of the directions caused general prejudice, as they generated additional correspondence and costs. Further, the second part of the reply and the applicant's witness statement and bundle were served just before hearing. The respondent's legal team had very little time to consider these documents. Inevitably this was prejudicial, as it meant additional last-minute work and costs. It also meant the early part of the hearing was taken up with the application to admit these documents.

(93) The section 22 notice and manager application also generated additional work, as the respondent's solicitors had to consider these and their impact on the section 27A application. They responded to the notice on 11 May and sent a

detailed letter to the Tribunal on 22 May opposing the application to postpone the hearing.

(94) Taking all of these factors into account, it is appropriate to make a costs order under Rule 13(B)(ii). The applicant conducted the 2018 Proceedings unreasonably in several respects and this generated additional, unnecessary work for the respondent's legal team and prolonged the hearing.

(95) The Tribunal then considered what costs order should be made. There was nothing in the respondent's conduct of the 2018 Proceedings that extinguishes its right to costs. Rather it is entitled to an order and the issue is what order is appropriate. This involves the exercise of the Tribunal's discretion and "*the power is not constrained by the need to establish a causal link between the costs incurred and the behaviour to be sanctioned*" (paragraph 40 of ***Willow Court***).

(96) The applicant suggested that some link was necessary, relying on ***McPherson*** but it is unnecessary for the Tribunal to resolve the apparent tension between these two cases. It has found that the applicant acted unreasonably in pursuing three misconceived points after 18 May 2018 (which was a Friday). Most of the breaches of directions breaches occurred after this date. The manager application and request to postpone the hearing was made on Monday 21 May. The logical conclusion is that the costs order should span the period from 21 May until the conclusion of the hearing on 14 June. Approximately half the hearing was spent on the 2017/18 reserve fund contributions, with the other half spent on the admissibility of the late documents and the applicant' misconceived points. The appropriate order is that applicant should pay 50% of the respondent's costs from 21 May until 14 June 2018.

(97) The respondent's costs are to be assessed on the standard basis with reference to the work undertaken in this case. It is not appropriate to base these costs on a sum claimed in previous proceedings. The applicant asserted that the case "*must go to detailed assessment*" if his approach was rejected. The Tribunal disagrees. Rule 13(7) specifically provides that costs may be summarily assessed and this is appropriate in this case, for the following reasons:

(a) the UT encouraged summary determinations at paragraph 43 of ***Willow Court***;

(b) although the total costs claim is approximately £35,000; the sum payable by the applicant is much lower as he only has to pay 50% of the respondent's costs for a period of 24 days;

(c) detailed assessment would mean further delays and additional costs;

(d) summary assessment in this case is consistent with the overriding objective; and

(e) the respondent has produced a detailed costs statement and the Tribunal has the information necessary to summarily assess the costs.

(98) Rule 13(8) specifically states that the CPR shall apply, with necessary modifications, to a detailed assessment under 13(7)(c). It does not mention summary assessments and it is debatable whether the CPR is imported to such assessments by the Tribunal. However, the costs still must be proportionate as they are being assessed on the standard basis. The Tribunal considered all of the criteria at CPR 44.3(5) with particular focus on the sum in issue in the proceedings. The applicant puts the 'value of the claim' at £7,500. This is incorrect. For most of the case, he was challenging the following service charges:

- Interim service charge (25/12/16 - 23/06/17) £897.37
- Interim service charge (24/06/17 - 24/12/17) £897.37
- Interim service charge (25/12/17 – 23/06/18) £1,098.30
- Reserve fund contribution (09/02/16) £11,363.57
- Reserve fund contribution (24/06/17-24/12/17) £2,500.00
- Reserve fund contribution (25/12/17 - 23/06/18) £2,500.00

£19,256.61

The 2016 reserve fund contribution was conceded at the 2018 hearing but was in issue until that time.

(99) Had the Tribunal disallowed part or all of the disputed service charges then other leaseholders at Block could have sought mirror determinations. The applicant's service charge proportion, as stated in his lease, is 10%. This means the potential sum at stake was £192,566.10 (10 x £19,256.61) and the proceedings had considerable importance to the respondent. When looking at proportionality, the Tribunal also had regard to the respondent's conduct. His failure to concede the misconceived points earlier, breaches of directions and the late and tactical section 22 notice and section 24 application were all unreasonable and generated additional and unnecessary work for the respondent. Taking all of these factors into account, the costs claimed by the respondent were proportionate to the sum in issue.

(100) The applicant did not challenge the hourly rates claimed for the respondent's solicitors, which the Tribunal allows in full. The only specific item he challenged was Mr Modha's fee for drafting the Costs Application. The amount of this fee (£500 plus VAT) was reasonable but it fell outside the 21 May-14 June

period and is not recoverable. The same is true of the solicitors' costs for work on the Costs Application.

(101) The respondent's costs statement itemises the work on documents but not give any dates. However, this can be determined from the narratives for each item. The following work would have been undertaken between 21 May and 14 June 2018:

Item	**Description**	**Hours**	**Total (£)**
3	Brief to Counsel	1.7	425.00
8	Review applicant's reply	0.4	100.00
9	Review suppl. bundle/list of issues	2.6/1.5	912.50
10	Preparation of hearing bundle/index	14.2	£3,550.00
11	Dealing with s22 notice/s24 application	2.8	£700.00

Part of item 10 was undertaken before the 21 May, as the original draft index was submitted to the applicant on 18 May. However, paginating the documents, finalising the index and preparing the bundles would have taken place from 21 May onwards. In relation to item 11, the section 24 application was submitted on 21 May so the work relating to this application is recoverable. The work on the section 22 notice is not recoverable, as it would have pre-dated 21 May.

(102) The applicant did not specifically challenge the time claimed for items, 3, 8, 9, 10 and 11. Using the Judge's knowledge and expertise, gained from deciding similar cases and long experience as a solicitor in private practice, the time claimed for each item is reasonable. The Tribunal allows the sums claimed for items 3, 8 and 9, in full. In relation to item 10, it allows 10 hours at £250 per hour (£2,500). For item 11 it allows 1.4 hours at £250 (£350). This means the total sum allowed for work on documents, before the 50% deduction, is £4,237.50 (excluding VAT)

(103) The total sum claimed for the solicitors' attendances is £4,817.50 (excluding VAT). This spanned the entire period of the 2018 Proceedings (approximately 4 ½ months). The respondent is only able to recover costs for the 24-day period from 21 May to 14 June. In the Judge's experience, the weeks leading up to the final hearing are the most work intensive. Upon this basis the Tribunal allows £1,500 (ex. VAT) for attendances between 21 May and 14 June, before the 50% deduction.

(104) As to disbursements, the Tribunal allows the photocopying of the hearing bundles (£250.51 ex. VAT) and the courier's fees (£165 ex. VAT) but not the Land Registry search fees (£6). Mr Modha's brief fee of £4,500 plus VAT is

allowed in full. At first sight, it appears on the high side for a one-day service charge hearing. However, this fee was not challenged by the applicant. On further consideration, it is reasonable given the number of issues, the volume of documents involved and the additional work generated by the applicant's unreasonable conduct. The 50% deduction also applies to these disbursements.

(105) The total recoverable sum (ex. VAT and before the 50% deduction) is £10,653.01, which is broken down as follows:

- Solicitors' work on documents £4,237.50
- Solicitors' attendances £1,500.00
- Disbursements £4,915.51

The adjusted sum due, after the 50% deduction, is £5,326.51. As to VAT, the respondent has not stated if it is VAT registered. If it is, then it may be able to recover part or all of the VAT, as input tax. In that event, it is not entitled to the recoverable VAT. The respondent is to clarify the position within 14 days and the Tribunal will then issue a supplemental decision, specifying the final sum due.

Name: Tribunal Judge Donegan **Date:** 28 August 2019

Rights of appeal

1. 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.

2. 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.

3. 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.

4. 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.

Appendix of relevant legislation

The Tribunals, Courts and Enforcement Act 2007

Section 29 Costs or expenses

(1) The costs of and incidental to—

(a) all proceedings in the First-tier Tribunal, and

(b) all proceedings in the Upper Tribunal,

shall be in the discretion of the Tribunal in which the proceedings take place.

(2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.

(3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.

(4) In any proceedings mentioned in subsection (1), the relevant Tribunal may—

(a) disallow, or

(b) (as the case may be) order the legal or other representative concerned to meet,

the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.

(5) In subsection (4) "wasted costs" means any costs incurred by a party—

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or

(b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.

(6) In this section "legal or other representative", in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf.

(7) In the application of this section in relation to Scotland, any reference in this section to costs is to be read as a reference to expenses.

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

Overriding objective and parties' obligations to co-operate with the Tribunal

Rule 3

3. - (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes –

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the

anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it –

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must –

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

Orders for costs, reimbursement of fees and interest on costs
Rule 13

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 in –
(i) an agricultural and land drainage case,
(ii) a residential property case, or
(iii) a leasehold case; or
(c) in a land registration case.

(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.

...

(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 to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) 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.