



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

**IN THE COUNTY COURT MONEY
CLAIMS CENTRE sitting at 10
Alfred Place, London WC1E 7LR**

Tribunal reference : **LON/00BJ/LSC/2021/0448**

Court claim number : **H83YX835**

HMCTS code (paper, video, audio) : **V : CVPREMOTE**

Property : **262 Dowdeswell Close, London SW15 5RN**

Applicant/Claimant : **The Mayor and Burgesses of the London Borough of Wandsworth**

Representative : **Ms Stephanie Lovegrove (Counsel) instructed by the South London Legal Partnership**

Respondent/Defendant : **Mr Graham Charles Botham**

Representative : **In person**

Tribunal members : **Judge Donegan
Mr R Waterhouse FRICS (Valuer Member)**

In the county court : **Judge Donegan**

Date of decision : **28 April 2022**

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents the tribunal were referred to are in a bundle of 218 pages, the contents of which were noted. The order made is described at the end of these reasons.

DECISION

This decision takes effect and is ‘handed down’ from the date it is sent to the parties by the tribunal office:

Summary of the decision made by the Tribunal

1. The following sum is payable by Mr Graham Charles Botham (‘the respondent’) to the Mayor and Burgesses of the London Borough of Wandsworth (‘the applicant’):
 - (i) Service charges: £3,461.19 (Three Thousand, Four Hundred and Sixty-One Pounds and Nineteen Pence).

Summary of the decisions made by the Court

2. The following sum is payable by the respondent to the applicant:
 - (i) Contractual interest of £774.22 (Seven Hundred and Seventy-Four Pounds and Twenty-Two Pence), as detailed in the attached schedule.
3. The Court makes no order for costs under Rule 27.14(2)(g) of the Civil Procedure Rules (‘CPR’).

The background and the proceedings

4. The proceedings concern service charges for 262 Dowdeswell Close, London SW15 5RN (‘the Property’). This is a three-bedroom, upper maisonette in Block B, 210-264 Dowdeswell Close, within the Lennox Estate. The applicant is the freeholder of the Property, and the respondent is the current leaseholder. The lease requires the applicant to provide services and for the respondent to contribute towards their costs by way a variable service charge. The relevant lease provisions are detailed below.
5. Proceedings were originally issued on 05 July 2021 in the County Court Money Claims Centre under claim number H83YX835. The respondent filed a defence dated 15 August 2022 and the proceedings were transferred to the Tribunal by an order of Deputy District Judge Asbrey dated 13 December 2020.
6. The following remedies are claimed in the particulars of claim:
 - (a) A judgment for outstanding service charges of £3,461.10,
 - (b) a determination of the service charges pursuant to section 81(1) of the Housing Act 1996, and

- (c) contractual interest of £608.21 to 28 June 2021 and continuing at the daily rate of £0.58.
7. In his defence and correspondence, the respondent requested a transfer of the proceedings for a determination under section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act'). He also referred to a counterclaim for "*Lack of maintenance as has been afforded to other flats to avoid damage and damage (sic)*". However, he did not give any details or quantify this counterclaim. Further, he did not give grounds for disputing the service charges.
 8. The Tribunal issued directions on 17 December 2021. These spelt out that the judge hearing the case would deal with all issues, including interest and costs. The Tribunal would decide the payability of service and administration charges and the judge (sitting along as a judge of the County Court) would make all necessary County Court orders. The case was listed for hearing on 11 April 2022 and was allocated (so far as necessary for the County Court proceedings) to the small claims track.
 9. The directions required both parties to file statements of case. The respondent's statement of case was to address the service charges "*setting out all items disputed with the reasons why they are disputed and, where applicable, any alternative sums offered by the respondent*" and be filed by 28 January 2022. The directions also provided for exchange of any witness statements by 18 March 2022.
 10. The respondent's statement of case was filed late, on 14 February 2022. This did not identify the disputed service charges or the reasons why they were disputed. Rather it raised a general complaint of dampness in flats at Dowdeswell Close, which was not drafted as a counterclaim for disrepair. The respondent also requested disclosure of various documents relating to the damp issue.
 11. The applicant's statement of case was filed on 25 February 2022. This raised the respondent's failure to comply with the directions and characterised his request for documents as a '*fishing expedition*'. The applicant also wrote to the Tribunal, requesting a case management hearing ('CMH') to determine the exact elements of the disputed service charges. They also referred to a possible application to strike out the respondent's statement of case, pursuant to Rule 9(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the 2013 Rules').
 12. The CMH was heard by Judge Latham on 05 April 2022. Ms Lovegrove appeared for the applicant and the respondent appeared in person. The respondent filed a six-page document "*Notes for Case Management Hearing*" and a series of photographs, shortly before the hearing and unsuccessfully sought directions to pursue a counterclaim for disrepair. His statement of case was struck out due to his failure to plead any case

as to why the service charges are not payable or are unreasonable. He was also debarred from defending the claim or adducting any evidence in response to the claim. Judge Latham then gave further directions, including provision for the respondent to attend the hearing on 11 April and make (oral) representations. He also directed the applicant to file and serve a digital hearing bundle by midday on 08 April.

13. At paragraph 18 of his decision, Judge Latham stated:
“I am satisfied that if Mr Botham wishes to pursue a claim for disrepair, he must pursue a separate action in the County Court. He should have due regard to the Pre-Action Protocol for Housing Condition Claims which is available online. He should also take legal advice. I suggested to Ms Lovegrove that the Applicant may wish to arrange a meeting with Mr Botham to discuss how any disrepair can be addressed. A mediation service is offered by this tribunal.”
14. The relevant legal provisions are set out in the appendix to this decision.

The lease

15. The lease was granted by the applicant (“*the Council*”) to Marian Josephine Teresa Staley (“*the Lessee*”) on 23 January 1989, pursuant to the right to buy provisions in the Housing Act 1985. The term is 125 years from 23 January 1989. The respondent is a successor in title to Ms Staley and is the current Lessee.
16. The Lessee’s covenants are at clause 3 and include the following obligation:
“(b) Subject to the provisions of Clause 5 to pay the Fourth Schedule percentage of the costs expenses and outgoings of the Council in complying with its obligations contained in the Fourth Schedule hereto and the Fifth Schedule percentage of the costs expenses and outgoings of the Council in complying with its obligations contained in the Fifth Schedule hereto”
17. The Fourth Schedule details the Council’s obligations for “*the Block*” and the Fifth Schedule details the Council’s obligations for “*the Estate*”. Both schedules include insuring, repairing and redecorating obligations together with a ‘sweeping-up’ clause. The Fourth and Fifth Schedule percentages are 3.55% and 0.20%, respectively.
18. The service charge provisions are at clause 5(iv). The “*Financial Year*” runs from 01 April to 31 March. The Council must produce a “*Certificate*”, certifying the “*Service Charge*” at the end of each Financial Year, being their actual expenditure in complying with the Fourth and Fifth Schedule obligations. The Council must also produce a written statement of the “*Estimated Charge*”, being the estimated

cost of complying with their Fourth and Fifth Schedule obligations, on 01 October in each year.

19. Clauses 5(c) and (d) provide:

“(c) The Certificate shall give credit for the amount of the Estimated Charge in respect of the Financial Year to which the Certificate refers which may have been previously paid by the Lessee and if the amount of this Estimated Charge shall exceed the amount of referred to in the Certificate then due credit for the amount by which it so exceeds shall be given to the lessee in respect of the Estimated Charge and the following Financial Year contained in the written statement referred to in (b) above and the Lessee shall pay to the Council the amount of the Estimated Charge as contained in the written statement together with the amount shown in the Certificate as being due (if any) within 14 days of receipt by the Lessee of the Certificate and the written statement.

(d) If the Lessee shall not have paid to the Council any sums of money due under Clause 3 within 14 days of the same having been demanded then the Council shall be entitled to charge interest thereon at the rate of 6% above the Base Rate for the time being of Barclays Bank PLC until the sum of money shall actually be paid to the Council and this interest shall then become due and payable by the lessee forthwith”

The hearing on 11 April 2022

20. The hearing started at approximately 10:10am. Ms Lovegrove appeared for the applicant and the respondent appeared in person, as they had at the CMH. Ms Lovegrove was accompanied (remotely) by Ms Elizabeth Parette who is the Leasehold and Procurement Manger for the applicant’s Housing and Regeneration Department.

21. The applicant filed a digital bundle of documents in accordance with the further directions. This included copies of the County Court and Tribunal documents, the lease, a witness statement from Ms Parette, a costs statement and interest schedule and various service charge accounts, demands, estimates and breakdowns. An amended interest schedule was filed, electronically, on the morning of the hearing.

22. At the start of the hearing the judge identified the issues to be determined by the Tribunal (service charges) and the County Court (interest and costs). Ms Lovegrove explained that costs were claimed under CPR Rule 27.14(2)(g), rather than pursuant to the lease or Rule 13 of the 2013 Rules.

23. The respondent then made an application to rely on a witness statement and exhibit dated 10 April 2022, which had been emailed to

the Tribunal case officer at 9:46am on 11 April. This was forwarded to the Tribunal members during the early part of the hearing.

24. The respondent explained the applicant's bundle contained the documents requested in his statement of case and he was only now able to particularise his case. He had received the bundle during the afternoon of 08 April and had spent the weekend analysing the documents. He had also contacted the Leasehold Advisory Service and arranged an appointment for 20 April. He had been advised to seek a transcript of the CMH on 05 April with a view to appealing the strike out and debarring orders. He wanted additional time to present his case and characterised that CMH as "*unfair*" and "*a travesty of justice*".
25. Ms Lovegrove opposed the application. She had received a copy of the respondent's witness statement just before the hearing but had not had an opportunity to read this. If the application was granted, then she would need an adjournment to consider the contents and obtain instructions. She also pointed out that the 'new' documents in the bundle relate to service charges rather than the damp issue and were not those requested in the respondent's statement of case. She submitted that the respondent should not be given a "*second bite of the cherry*", given his breach of the original directions. He had sufficient information to particularise his case before serving his statement of case but failed to do so.
26. On questioning by the Tribunal, the respondent stated he had not yet applied for permission to appeal Judge Latham's orders. He also gave brief details of his grounds for disputing the service charges. He had paid substantial compensation for water ingress to another flat in the same block believing this emanated from the Property. Having spoken with other leaseholders, he now believes this ingress was caused respondent's failure to maintain communal walkways at the block. He seeks to recover the compensation payments, which far exceed the disputed service charges, from the respondent.
27. Following a short adjournment, the Tribunal refused the respondent's application. His witness statement was filed/served just before the hearing and was far too late. Had the statement been admitted then an adjournment would be necessary to give the Tribunal and the applicant time to consider the contents. Given the modest value of the claim it would be contrary to the overriding objective (Rule 3 of the 2013 Rules) to adjourn the hearing. Further, Judge Latham had debarred the respondent from debarring the claim or adducing any evidence in response. The respondent's application was an attempt to circumvent these orders. The correct procedure would have been an application for permission to appeal Judge Latham's decision. No such application had been made at the time of the hearing.

28. The judge reiterated that the respondent could still pursue a disrepair claim in the County Court (as highlighted at paragraph 18 of Judge Latham’s decision).
29. The Tribunal then heard submissions on the service charges, which are summarised below. Neither party requested an inspection of the Property; nor did the Tribunal consider that one was necessary, or that one would have been proportionate to the issues in dispute.
30. The hearing bundle included a witness statement from Ms Parette dated 07 April 2022. This had not been served in accordance with the directions and there was no application to admit the statement. Ms Parette did not give formal evidence but answered a couple of questions from the Tribunal. Rather, Ms Lovegrove made oral submissions on the service charges and directed the Tribunal to the relevant lease provisions, accounts, demands and breakdowns.

31. The service charges claimed by the applicant are:

Invoice dated 01/10/2016

Adjustment to 2015/16 service charge	£48.53
Estimated charge for 2016/17	£689.00

Invoice dated 01/10/2017

Adjustment to 2016/17 service charge	-£18.82
Estimated charge for 2017/18	£753.00

Invoice dated 01/10/2018

Adjustment to 2017/18 service charge	-£87.82
Estimated charge for 2018/19	£678.00

Invoice dated 01/10/2019

Adjustment to 2018/19 service charge	-£30.78
Estimated charge for 2019/20	£705.00

Invoice dated 01/10/2020

Adjustment to 2019/20 service charge	£7.80
Estimated charge for 2020/21	<u>£737.00</u>
	£3,480.91

32. This figure is slightly higher than the sum claimed (£3,461.19). It appears, from the interest statements that the disparity emanates from the 2016 invoice. The sum claimed in the statements is £717.81 whereas the sum invoiced is £737.53 (£48.53 plus £689). This small disparity benefits the respondent.

33. The figures in the service charge demands reconcile with the accounts and estimates and the demands were accompanied by summaries of rights and obligations, as required by section 21B of the 1985 Act. During the hearing the judge pointed out the level of the service charges are consistent for all five years and are modest, given the size of the Property.
34. The respondent accepted the service charges are modest. However, the applicant's service was below the standard he expected, resulting in water ingress to the flats. Had they provided a reasonable service then the charges would be reasonable. He did not challenge any specific items in the accounts.

The Tribunal's decision

35. The Tribunal determines that service charges of £3,461.19 are payable by the respondent, in relation to the demands dated 01 October 2016, 01 October 2017, 01 October 2018, 01 October 2019 and 01 October 2020.

Reasons for the Tribunal's decision

36. The Tribunal is satisfied the service charges have been demanded in accordance with the lease and the relevant statutory provisions. The amounts are modest for the size of the Property and the total sum claimed (£3,461.19), is slightly less than the total sum demanded (£3,480.91).
37. The onus was on the respondent to identify the disputed service charge items and the reasons they are disputed. He failed to do either and simply made general allegations of poor service and disrepair. There was no evidence to support these allegations and the service charges are allowed in full.

County Court issues

38. The judge informed the parties of the Tribunal's decision and explained that he would go on to hear the County Court issues, on his own. At that stage, the valuer member (Mr Waterhouse) left the hearing.

Service charge judgment

39. The applicant is entitled to judgment for £3,461.19, being the service charges determined by the Tribunal.

Interest

40. Ms Lovegrove also sought contractual interest of £774.22 to 11 April 2022 and continuing at the rate of 57.84 pence per day. The applicant's original schedule claimed interest at 8% per annum. The amended schedule correctly claimed interest at 6% above the base rate of Barclays Bank PLC, pursuant to clause 5(d) of the lease.
41. The respondent did not contest the interest claim and the judge allowed interest of £774.22 to 11 April. He queried the claim for continuing interest, as the total amount of the judgment is below £5,000. Following another short adjournment, Ms Lovegrove withdrew the claim for continuing interest.
42. The total amount of the judgment, including interest, is £4,235.41 (£3461.19 plus £774.22).

Costs

43. The applicant's costs statement claimed total costs of £11,210.
44. The judge briefly outlined the costs rules applicable to the small claims track. He explained the applicant would need to establish unreasonable behaviour if they were to recover more than fixed costs from the respondent and this is a high threshold. He then adjourned the hearing to give the parties an opportunity to discuss the costs claim and the respondent's potential disrepair claim.
45. When the hearing resumed, Ms Lovegrove stated that the applicant had made an open offer to waive their costs claim if the respondent waived his disrepair claim to the date of the hearing and the respondent said he wished to accept this offer. The judge explained that the proposed settlement would restrict any rights of appeal. The respondent confirmed he still wished to settle and would not be pursuing any appeal. The judge then directed the parties to file a consent order, setting out the agreed terms.
46. The applicant filed a signed minute of agreed terms on 22 April 2022, which disposes of the costs claim and potential disrepair claim. This contains a minor typographical error, stating that the total sum due is £4,235.42. The correct figure is £4,235.41.

Conclusion

47. By way of conclusion, the Court makes the following awards:
 - (i) Service charges: £3,461.19
 - (ii) Interest to 11 April 2022: £774.22.

48. The accompanying form of judgment will be submitted with these reasons to the County Court Money Claims Centre to be entered in the Court's records.

Name: Judge Donegan

Date: 28 April 2022

ANNEX - RIGHTS OF APPEAL

Appealing against the Tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional Tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against the County Court decision

1. A written application for permission must be made to the Court at the Regional Tribunal office which has been dealing with the case.
2. The date that the judgment is sent to the parties is the hand-down date.
3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.
4. The application for permission to appeal must arrive at the Regional Tribunal office within 28 days after the date this decision is sent to the parties.

5. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the appropriate County Court (not Tribunal) office within 14 days after the date the refusal of permission decision is sent to the parties.
7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the Tribunal and the County Court

In this case, both the above routes should be followed.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18 Meaning of “service charge” and “relevant costs”

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 Limitation of service charges: reasonableness

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

...

Section 21B Notice to accompany demands for service charges

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 27A Liability to pay service charges: jurisdiction

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or

- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Housing Act 1996

Section 81 Restriction on termination of tenancy for failure to pay service charge

- (1) A landlord may not, in relation to premises let as a dwelling, exercise a right of re-entry or forfeiture for failure by a tenant to pay a service charge or administration charge unless—
 - (a) it is finally determined by (or on appeal from) the appropriate tribunal or by a court, or by an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, that the amount of the service charge or administration charge is payable by him, or
 - (b) the tenant has admitted that it is so payable.
- (2) The landlord may not exercise a right of re-entry or forfeiture by virtue of subsection (1)(a) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.
- (3) For the purposes of this section it is finally determined that the amount of a service charge or administration charge is payable—
 - (a) if a decision that it is payable is not appealed against or otherwise challenged, at the end of the time for bringing an appeal or other challenge, or
 - (b) if such a decision is appealed against or otherwise challenged and not set aside in consequence of the appeal or other challenge, at the time specified in subsection (3A).
- (3A) The time referred to in subsection (3)(b) is the time when the appeal or other challenge is disposed of—
 - (a) by the determination of the appeal or other challenge and the expiry of the time for bringing a subsequent appeal (if any), or
 - (b) by its being abandoned or otherwise ceasing to have effect.
- (4) The reference in subsection (1) to premises let as a dwelling does not include premises let on—
 - (a) a tenancy to which Part II of the Landlord and Tenant Act 1954 applies (business tenancies),
 - (b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 in relation to which that Act applies, or

- (c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995.
- (4A) References in this section to the exercise of a right of re-entry or forfeiture include the service of a notice under section 146(1) of the Law of Property Act 1925 (restriction on re-entry or forfeiture).
- (5) In this section
 - (a) “administration charge” has the meaning given by Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002,
 - (b) “arbitration agreement” and “arbitral tribunal” have the same meaning as in Part 1 of the Arbitration Act 1996 (c. 23) and “post-dispute arbitration agreement”, in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen,
 - (c) “dwelling” has the same meaning as in the Landlord and Tenant Act 1985 (c. 70), and
 - (d) “service charge” means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).
- (5A) Any order of a court to give effect to a determination of the appropriate tribunal shall be treated as a determination by the court for the purposes of this section.
- (6) Nothing in this section affects the exercise of a right of re-entry or forfeiture on other grounds.
- (7) For the purposes of this section, “appropriate tribunal” means—
 - (a) in relation to premises in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
 - (b) in relation to premises in Wales, a leasehold valuation tribunal.

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

Overriding objective and parties’ obligation to co-operate with the Tribunal

- 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.

...

Striking out a party's case

9. - (1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.
- (2) The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal –
- (a) does not have jurisdiction in relation to the proceedings or case or that part of them; and
 - (b) does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.
- (3) The Tribunal must strike out the whole or part of the proceedings or case if -
- a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;
 - (b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;
 - (c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;

- (d) the Tribunal considers the proceedings or case (or part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or
 - (e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding
- (4) The Tribunal may not strike out the whole or a part of the proceedings or case under paragraph (2) or paragraph 3(b) to (e) without first giving the parties an opportunity to make representations in relation to the proposed striking out.
 - (5) If the proceedings or case, or part of them, have been struck out under paragraph (1) or (3)(a), the applicant may apply for the proceedings or case, or part of it, to be reinstated.
 - (6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to that party.
 - (7) This rule applies to a respondent as it applies to an applicant except that –
 - (a) a reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them; and
 - (b) a reference to an application for the reinstatement of proceedings or case or part of them which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings; or part of them.
 - (8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.

Civil Procedure Rules

Costs on the small claims track

27.14

(1) This rule applies to any case which has been allocated to the small claims track.

(Rules 46.11 and 46.13 make provision in relation to orders for costs made before a claim has been allocated to the small claims track)

(2) The court may not order a party to pay a sum to another party in respect of that other party's costs, fees and expenses, including those relating to an appeal, except –

(a) the fixed costs attributable to issuing the claim which –

- (i) are payable under Part 45; or
 - (ii) would be payable under Part 45 if that Part applied to the claim;
- (b) in proceedings which included a claim for an injunction or an order for specific performance a sum not exceeding the amount specified in Practice Direction 27A for legal advice and assistance relating to that claim;
- (c) any court fees paid by that other party;
- (d) expenses which a party or witness has reasonably incurred in travelling to and from a hearing or in staying away from home for the purposes of attending a hearing;
- (e) a sum not exceeding the amount specified in Practice Direction 27A for any loss of earnings or loss of leave by a party or witness due to attending a hearing or to staying away from home for the purposes of attending a hearing;
- (f) a sum not exceeding the amount specified in Practice Direction 27A for an expert's fees;
- (g) such further costs as the court may assess by the summary procedure and order to be paid by a party who has behaved unreasonably;
- (h) the Stage 1 and, where relevant, the Stage 2 fixed costs in rule 45.18 where

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(i) the claim was within the scope of the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ('the RTA Protocol') or the Pre-action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims ('the EL/PL Protocol');

(ii) the claimant reasonably believed that the claim was valued at more than the small claims track limit in accordance with paragraph 4.1(4) of the relevant Protocol; and

(iii) the defendant admitted liability under the process set out in the relevant Protocol; but

(iv) the defendant did not pay those Stage 1 and, where relevant, Stage 2 fixed costs; and

(i) in an appeal, the cost of any approved transcript reasonably incurred.

(3) A party's rejection of an offer in settlement will not of itself constitute unreasonable behaviour under paragraph (2)(g) but the court may take it into consideration when it is applying the unreasonableness test.

(4) The limits on costs imposed by this rule also apply to any fee or reward for acting on behalf of a party to the proceedings charged by a person exercising a right of audience by virtue of an order under section 11 of the Courts and Legal Services Act 1990(a lay representative).