FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AN/HMD/2021/0004 CVPREMOTE**
Property	**:**	**108A Uxbridge Road, London, W12 8LR.**
Applicant	**:**	**Mohammed Hanif.**
Representative	**:**	**Simon Strelitz of Counsel; Simon Cook, Hodders Law.**
Respondent	**:**	**London Borough of Hammersmith and Fulham.**
Representative	**:**	**Ms. Mykia Angus MCIEH Ref: 2021/00442/Has255.**
Type of application	**:**	**Appeal in respect of a declaration of an HMO –** Schedule 256(g) & Part 3 of Schedule 5 to the Housing Act 2004 – **Rule 13 costs application**
Tribunal members	**:**	**Judge Professor Robert Abbey**
Date of original video Hearing	**:**	**14 January 2022 and 11 April 2022**
Date of Costs Decision	**:**	**19 July 2022**

COSTS DECISION

Application for costs

1. An application was made by the Applicant under Rule 13 of the Tribunal Rules in respect of the Applicant's costs. The Tribunal

subsequently received a schedule of costs totalling £15616.50. This is the amount listed by the Applicant and consists of legal costs, Tribunal fees, disbursements and VAT. (This total is made up of £8642.50 legal costs, Counsel's fees of £4500, Tribunal fees and VAT of £2584). The details of the provisions of Rule 13 are set out in the appendix to these Directions and rights of appeal made available to parties to this dispute are set out in an Annex.

2. The applicant seeks a costs order under Rule 13(1)(b), based on the respondent's unreasonable conduct. It also seeks an order for wasted costs under Rule 13(1)(a).

3. Before a costs decision can be made, the Tribunal needs to be satisfied that there has been unreasonableness. At a second stage it is essential for the Tribunal to consider whether, in the light of unreasonable conduct (if the Tribunal has found it to have been demonstrated), it ought to make an order for costs or not. It is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.

4. The Applicant filed with the Tribunal the Applicant's written costs application dated 6 May 2022 and comments/observations thereon were requested of the Respondent but these were not received by the Tribunal.

5. It now falls to me to consider the costs application in the light of the written submissions before me. I do this but in the context of the circumstances of the original decision.

DECISION

1. The Tribunal's powers to order a party to pay costs may only be exercised where a party has acted "unreasonably". Taking into account the guidance in that regard given by HH Judge Huskinson in *Halliard Property Company Limited v Belmont Hall & Elm Court RTM, City and Country Properties Limited v Brickman LRX/130/2007, LRA/85/2008,* (where he followed the definition of unreasonableness *in Ridehalgh v Horsefield* [1994] Ch 205 CA), the Tribunal was not satisfied that there had been unreasonable conduct so as to prompt a possible order for costs. The Tribunal was mindful that that this jurisdiction is generally a "no costs" jurisdiction. By contrast with the county court, residential property tribunals are designed to be "a largely costs-free environment": *(1) Union Pension Trustees Ltd, (2) Mr Paul Bliss v Mrs Maureen Slavin* [2015] UKUT 0103 (LC).

2. The Tribunal was also mindful of a recent decision in the case of *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander* [2016] UKUT 0290 (LC) which is a detailed survey and review of the question of costs in a case of this type. At paragraph 24 of the decision the

Upper Tribunal could see no reason to depart from the views expressed in *Ridehalgh*. Therefore, following the views expressed in this recent case at a first stage the Tribunal needs to be satisfied that there has been unreasonableness. Under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, this Tribunal can decide whether a party has behaved unreasonably. To make this order, the Tribunal must be satisfied that the party's conduct was unreasonable in bringing the action in the first instance e.g., the claim lacked merits in its entirety.

3. At a second stage it is essential for the Tribunal to consider whether, in the light of any unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.

4. In *Ridehalgh* it was said that ""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.

5. The *Willow Court* decision is of paramount importance in deciding what conduct might be unreasonable. I have mentioned the approach of the Upper Tribunal in this decision but I think it appropriate to quote the relevant section of the decision in full: -

> "*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…..."Unreasonable" conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham's "acid test": is there a reasonable explanation for the conduct complained of?"*

6. At paragraph 43, the UT emphasised that Rule 13(1)(b) applications "*…should not be regarded as routine…*" and "*…should not be allowed to become major disputes in their own right.*" It seems to this Tribunal that therefore the bar to unreasonableness is set quite high in that what amounts to unreasonableness must be quite significant and of serious consequence. This being so the Tribunal must now consider the conduct of

the parties in this dispute given the nature of the judicial guidance outlined above.

7. The Applicant maintains that the Respondent was unreasonable in the conduct of the dispute. Consequently, the Applicant invited the Tribunal to make a finding of unreasonableness on the part of the Respondent. In the original decision the Tribunal stated that: -

> *"The respondent's case rested upon the evidence given by Ms Angus. She did not make a convincing witness. Her evidence was confused and she was forced in cross examination to concede that there were several problems with her evidence. Moreover, her trial bundle was not helpfully compiled as there were two numbering systems and it was separated into several unconnected files. This did not help the Tribunal follow her evidence.*
>
> *The Tribunal were not satisfied that there was satisfactory or convincing evidence of the required multiple occupation of the property such that a notice could be issued. Mr Simms Davis was not at the hearing and so all we had were the completed questionnaires. The persons making them were not in front of the Tribunal and they were not completed by the witness before the Tribunal, Ms Angus, and so the Tribunal was in difficulties in coming to a decision on the merits of this evidence. There were also the issues of the language of the person giving the evidence and whether or not they had understood what they were doing or supposedly saying. Moreover, while the forms purport to be signed by the person allegedly completing the forms there is no signature from a Case Officer from the local authority or indeed an indication of the name of the case officer involved in the completion of the forms. The two forms disclosed in the trial bundle also appear to be undated."*

8. Therefore, was this sufficient to show unreasonableness on the part of the local authority? I think not. The Tribunal accepted that the case preparation by the local authority was inadequate and the presentation of the case was at an inferior level but this did not seem to the Tribunal to amount to unreasonableness.

9. The applicant invited the Tribunal to consider the Respondent's conduct in the round when deciding whether to order the Respondent to pay the Applicant's costs. The Tribunal was also invited to look at the conduct of the Applicant by way of comparison in deciding whether the Respondent has behaved unreasonably and/or has caused costs to be wasted.

The applicant asserted that: -

> *"The Respondent filed and served an unnecessarily lengthy and repetitive bundle of documents. Not only did this require the Applicant's solicitor and the Applicant himself to waste a disproportionate amount of time reading and considering the bundle but the bundle did not contain evidence that would enable the Tribunal to conclude that the Respondent had been entitled to issue the notice under appeal. This meant that the Respondent was bound to fail in defending the appeal.*
>
> *Having filed the bundle and having reviewed the Applicant's bundle, the Respondent could have taken the opportunity to withdraw the notice under appeal. Had it done so, considerable costs could have been saved by both the Applicant and the Respondent. However, the Respondent failed to do so.*
>
> *The Respondent was represented at the hearing by its principal witness (Ms Angus). Although another witness statement was in the Respondent's bundle no other witness was called. This meant that there was very little cogent evidence from the Respondent before the Tribunal and that the Respondent was bound to fail."*

10. The Tribunal did of course carefully consider the conduct of the local authority and whilst the organisation of the evidence presented at the full hearing was disorganised and unimpressive, this did not in the view of this Tribunal amount to unreasonable conduct so as to allow a Rule 13 costs order. While the presentation of the evidence suffered from undue prolixity it did rest upon detail that did merit some scrutiny before the Tribunal. the Tribunal was not satisfied that the Council's conduct was unreasonable in bringing the action in the first instance e.g., the claim did not lack merits in its entirety.

11. The Respondent has been giving time to respond in detail to the costs claim. Regrettably it has failed to do so. In the absence of any relevant submissions on the costs claim from the Respondent the Tribunal considered the paperwork from the original decision and also the Applicant's comments. In these circumstances, the Tribunal was not satisfied that there was enough information or detail to persuade it that there had been unreasonable conduct on the part of the Respondent.

12. Taking into account all that the parties have said about the case and the actions of the parties involved, the Tribunal cannot find evidence to match the high bar of unreasonable conduct set out above. The Tribunal was therefore not satisfied that stage one of the process had been fulfilled in that it had not found there has been unreasonableness for the purposes of a costs decision under Rule 13 on the part of the Applicant.

13. With regard to the application for wasted costs this will arise when a party acts unreasonably and their conduct increases the other party's costs. This

is a power given by the Tribunals, Courts and Enforcement Act 2007. And under the Tribunal Rules It is not used very often These costs awards are usually made against the legal representatives themselves for their unreasonable conduct but are rarely made and are quite uncommon in this jurisdiction. Bearing in mind the first costs determination with regard to the other costs application set out above, the wasted costs application is also refused.

14. In the circumstances the tribunal determines that there be no order for costs pursuant to Rule 13.

15. However, Rule 13 does allow for the refund of Tribunal fees. Rule 13(2) states that

> "*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*."

There is no requirement of unreasonableness in this regard. Therefore, in this case the Tribunal considers it appropriate that the Respondent refund the Applicant's fee payments of £300.

16. In the circumstances the tribunal determines that there be an order for the refund of the application fee in the sum of £300 pursuant to Rule 13(2).

Name:	Professor Robert M Abbey	**Date:**	19 July 2022

Appendix

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8)

Orders for costs, reimbursement of fees and interest on costs

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 land and 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.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.

(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 is 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.

ANNEX - 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.