



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

Case reference : **LON/00AK/LSC/2021/0420**

HMCTS code (paper, video, audio) : **P: PAPERREMOTE**

Property : **3 Geary Court, 24 The Concourse,
London N9 0TQ**

Applicant : **Mr AMAR HAYAT**

Representative :

Respondent : **LONDON AND QUADRANT HOUSING
TRUST**

Representative :

Type of application : **An Application for Costs pursuant to
Rule 13 of the Tribunal Procedure
(First Tier Tribunal) (Property
Chamber) Rules 2013**

Tribunal members : **JUDGE SHAW**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **3rd October 2022**

BACKGROUND

1. The Tribunal issued its Decision in this case on 19th July 2022. For ease of reference, a copy of the Decision is attached hereto. In short, in an earlier determination made by the Tribunal in 2019, the Tribunal had ordered that the service charges levied by the Respondent in the service charge years 2016/17 and 2017/18, should be reduced in respect of Geary Court N9 OTQ, which is a purpose-built block of 11 flats. The Applicant is the leaseholder of one of those flats (“the Property”). He is not in residence at the Property, and was not joined as a party to the original proceedings.
2. Consequent upon the above finding, the Applicant contacted the Respondent and requested that the appropriate sums, consistent with the Tribunal’ findings, be applied to his account, either by refund or credit. The Respondent declined to do so. Accordingly, the Applicant was compelled to apply for an order requiring the adjustments to be made.
3. Having failed to make the adjustment, the Respondent failed to comply with any of the Directions given by the Tribunal on 8th March 2022. It failed to serve any Statement of Case, setting out its position. The Tribunal was required to serve a Notice on 13th May 2022, warning that if no such compliance took place, it would be debarred from defending. The Formal Notice was likewise ignored and on 31st May 2022, a Debarring Order was made.

THE DECISION

4. As indicated, on 19th July 2022, this Tribunal made its determination, in favour of the Applicant, and further ordering the Respondent to refund the Tribunal fee of £100 incurred by the Applicant in making the application.
5. Having received the Decision, the Applicant wrote to the Tribunal, and requested an order for costs in his favour. The request was imprecise both in terms of the grounds of the application and on quantum. The Tribunal treated the communication as an application for Rule 13 costs, and issued Directions on 21st July 2022, requiring the Applicant to explain his case, quantify it, and deal with the steps the Tribunal would have to consider pursuant to the guidance given by the Upper Tribunal in *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC).
6. The Applicant complied with the Directions. He has produced Written Submissions in respect of his costs application. And an itemised Schedule of Costs. He is himself a sole practitioner solicitor. In keeping with its previous

practice, the Respondent, though supplied with these submissions, failed wholly to respond in any way, and in breach of the Tribunal's Directions.

ANALYSIS

7. Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, provides:

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, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 199 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.

8. The Upper Tribunal gave guidance in the *Willow* case referred to above, and propounded a 3 stage procedure in cases governed by Rule 13(1)(b), that is to say cases of alleged unreasonable conduct in “*bringing, defending or conducting proceedings*” which is the essence of the application in this case. The Tribunal proposes to apply the 3 stage procedure.

9. First, has the Respondent acted unreasonably in the defending or conduct of these proceedings? The Upper Tribunal directs that conduct will be unreasonable if there is no reasonable explanation for the conduct complained of. In this case, despite having been given repeated opportunities to explain its conduct, it failed to do so. In the absence of any such explanation, the Tribunal finds unreasonableness in the refusal to adjust the Applicant’s service charge account in the first place, thereby obviating the need to institute proceedings at all. The only explanation given, in the Respondent’s emails attached to the Applicant’s submissions, has been that he, the Applicant, was not a party to the original proceedings, and therefore cannot take the benefit of the result. But that, in the view of the Tribunal, is to put form completely in the place of substance. There has been not the slightest suggestion that his case was in any way distinguishable from the other original Applicants whose cases were successful before the Tribunal. What was the Respondent suggesting the Applicant should do? Commence fresh proceedings on the self-same facts and require the Tribunal to

go through the completely duplicatory exercise of making the same findings all over again? Apparently so, for that is what has happened in this case, with all the consequent waste of time and costs on the part of the Applicant and the Tribunal.

10. As if to compound its unreasonableness, the Respondent then proceeded to flout a whole series of Tribunal orders and Directions (as particularised above), and has maintained a stony silence in respect of both the Applicant's main application and indeed this application for costs. It has failed in any way to engage with these proceedings or to give any explanation of its stance.
11. For these reasons, the Tribunal is satisfied that the application of the first stage of the procedure results in a finding of unreasonableness, and so finds.
12. Secondly, ought the order be made? Notwithstanding being satisfied as to the unreasonableness on the part of the Respondent, the Tribunal has a discretion. The Tribunal can see no reason not to make an order, and every reason to do so. Because of the completely unhelpful and uncooperative stance taken by the Respondent, the Tribunal's time has been wasted upon a determination, the results of which were inevitable, and other litigants with cases to be heard, have been delayed and put back in the lists. The Tribunal's resources have been ill-used, and the Applicant himself has expended time and costs in the pursuit of an application which should never have been necessary. The Respondent's ignoring of Tribunal orders has been cavalier, to put it at its lowest.
13. The Upper Tribunal points out, in the context of the third stage of the process, that it does not follow, that even if the first 2 stages are cleared, an order for full reimbursement on a standard basis should inevitably follow. There remains an obligation to deal with the case justly and fairly, bearing in mind proportionality, and the other matters listed at paragraph 29 of the *Willow* decision.
14. The Applicant has produced a detailed and itemised Schedule of Costs. He is a sole practitioner of more than 20 years' experience and would normally charge himself out at a rate of £325 per hour. He has however used the Law Society Grade A rate of £282 per hour. It is appropriate to take into account these Law Society rates because he is a litigant but also a solicitor, who, had he not carried out this work, would have been entitled to engage, and expend costs, on independent solicitors (who indeed may have required more time to familiarise themselves with the case than himself). He has taken professional time in the preparations for this case and it seems entirely reasonable to the Tribunal for these costs to be recouped. Equally reasonable are the items of work and corresponding times, in the view of the Tribunal. The one item which the

Tribunal would marginally reduce is the final item of 1 hour spent on the preparation of the costs submissions and schedule. Time spent on preparation of the schedule is often disallowed, and the Tribunal would halve the time to 30mins overall, and round out the costs from the £3168 claimed to £3000. The Tribunal is mindful that this exceeds the sum in issue, but that is a symptom of the stance taken by the Respondent in the case, which could so easily have been avoided.

CONCLUSION AND ORDER

15. For the reasons set out above, the Respondent is ordered to pay the Applicant's costs of this application assessed at £3000, pursuant to Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.

JUDGE SHAW

3rd October 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may