



FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)

**Case reference** : **CAM/OOKB/HTA/2023/003**

**Property** : **The Heights, 25 St John Street,  
Bedford, MK42 0FW**

**Applicant** : **Leaseholders of the Heights**

**Respondent** : **Sampsons Limited**

**Type of application** : **An application for Rule 13 costs**

**Tribunal** : **Judge Shepherd**

  

**Date of Decision** : **14<sup>th</sup> March 2025**

**DECISION**

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1. The Applicant is seeking costs pursuant to Rule 13 of the Tribunal Procedure (First Tier Tribunal) Rules 2013. The costs they seek are significant - £35322.60. They base their claim on the following matters:
  - Illegal behaviour by the Respondent and his family.
  - Alleged Irregularities by the Respondent in the management of the reserve fund.
  - Failure to comply with directions.
  - The manner of the provision of evidence.

***Rule 13 costs***

2. The parties were invited to make submissions in relation to Rule 13 costs.

3. The relevant parts of Rule 13 of the Tribunal Procedure ( First Tier Tribunal) ( Property Chamber) Rules 2013 state the following:

*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;*

*(iv) a tenant fees case;*

*(c) in a land registration case, or*

*(d) in proceedings under Schedule 3A to the Communications Act 2003 (the Electronic Communications Code)—*

*(i) under Part 4A (code rights in respect of land connected to leased premises: unresponsive occupiers); or*

*(ii) that have been transferred from the Upper Tribunal.*

*.....*

*(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 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.*

4. Wasted costs is what we are dealing with here. The Tribunal is primarily a no costs tribunal. Unlike the County Court costs do not follow the event. A victorious Applicant or Respondent cannot argue that their opponent was unreasonable simply by maintaining a claim or defence which was ultimately unsuccessful. Something more is required.
5. The criteria for Reg 13 costs were set out in the well known case of Willow Court Management Co (1985) Ltd v Alexander Sinclair v 231 Sussex Gardens Right to Manage Ltd Stone v 54 Hogarth Rd, London SW5 Management Ltd [2016]UKUT 290 (LC)
6. In that case the Upper Tribunal held that an assessment of whether behaviour was unreasonable required 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. There was no reason to depart from the guidance on the meaning of "unreasonable" in Ridehalgh v Horsefield [1994] Ch. 205, [1994] 1 WLUK 563, Horsefield applied. Unreasonable conduct included conduct that was vexatious and designed to harass the other side rather than advance the resolution of the case. It was not enough that the conduct led to an unsuccessful outcome. The test could be expressed in different ways by asking whether a reasonable person in the position of the party would have conducted

themselves in the manner complained of, or whether there was a reasonable explanation for conduct complained of.

7. The Upper Tribunal stated further 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 (see paras 24, 26 of judgment).
8. The first stage of the analysis was an objective decision about whether a person had acted unreasonably. If so, a discretionary power was engaged and the tribunal had to consider whether it ought to make a costs order. If so, the third stage was the terms of the order.
9. There was no general rule in the tribunal that the unsuccessful party would be ordered to pay the successful party's costs. Unlike wasted costs, no causal connection between the conduct and the costs incurred was required, *McPherson v BNP Paribas SA (London Branch)* [2004] EWCA Civ 569, [2004] 3 All E.R. 266, [2004] 5 WLUK 273 applied.
10. Rule 13(1)(a) and (b) should be reserved for the clearest cases and it was for the party claiming costs to satisfy the burden of demonstrating that the other party's conduct had been unreasonable.
11. An application should be determined summarily, preferably without the need for a further hearing, and after the parties had had the opportunity to make submissions.

## **Determination**

12. None of the issues raised by the Applicants engage Rule 13 costs. The alleged illegality and misuse of the reserve fund are not within the Tribunal's jurisdiction. Neither side performed well in terms of complying properly with directions. The Tribunal were flooded with evidence from both sides much of which was not relevant or barely relevant to the case before us. Much of the evidence was filed late. This was despite the fact that both sides had solicitors and counsel instructed.

**Judge Shepherd**

**14<sup>th</sup> March 2025**

## 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 should be made on Form RP PTA available at

<https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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 be made to the Upper Tribunal (Lands Chamber).