



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

Case Reference : LON/00BH/OLR/2024/0447

Property : 52 Perth Road, London, E10 7PB

Applicant (Tenant) : Joanna Wells

Representative : Tom Zhang of Counsel instructed by
Cartwright Cunningham Haselgrove
& Co

Respondent (Landlord) : Daejan Estates Limited

Representative : Lorenzo Leoni of Counsel instructed
by Wallace LLP

Type of Application : Landlord's application for Wasted
Costs & Unreasonable Costs Rules
13(1)(a) & (b) Tribunal Procedure
Rules 2013 in connection with an
application for determination of
premium or other terms of
acquisition (Lease renewal) section
48 (1) of the Leasehold Reform
Housing and Urban Development Act
1993.

Tribunal Member(s) : Judge Tildesley OBE
Mr D Jagger FRICS

**Date and venue of the
Hearing** : 20 August 2025
10 Alfred Place, London, WC1E 7LR

Date of Decision : 9 September 2025

DECISION

Senior President of Tribunals Practice Direction: Reasons for Decisions 4 June 2024

1. This Practice Direction states basic and important principles on the giving of written reasons for decisions in the First-tier Tribunal. It is of general application throughout the First-tier Tribunal. It relates to the whole range of substantive and procedural decision-making in the Tribunal, by both judges and non-legal members. Accordingly, it must always be read and applied having regard to the particular nature of the decision in question and the particular circumstances in which that decision is made (paragraph 1).
2. Where reasons are given, they must always be adequate, clear, appropriately concise, and focused upon the principal controversial issues on which the outcome of the case has turned. To be adequate, the reasons for a judicial decision must explain to the parties why they have won and lost. The reasons must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the main issues in dispute. They must always enable an appellate body to understand why the decision was reached, so that it is able to assess whether the decision involved the making of an error on a point of law. These fundamental principles apply to the tribunals as well as to the courts (paragraph 5).
3. Providing adequate reasons does not usually require the First-tier Tribunal to identify all of the evidence relied upon in reaching its findings of fact, to elaborate at length its conclusions on any issue of law, or to express every step of its reasoning. The reasons provided for any decision should be proportionate, not only to the resources of the Tribunal, but to the significance and complexity of the issues that have to be decided. Reasons need refer only to the main issues and evidence in dispute, and explain how those issues essential to the Tribunal's conclusion have been resolved (paragraph 6).
4. Stating reasons at any greater length than is necessary in the particular case is not in the interests of justice. To do so is an inefficient use of judicial time, does not assist either the parties or an appellate court or tribunal, and is therefore inconsistent with the overriding objective. Providing concise reasons is to be encouraged. Adequate reasons for a substantive decision may often be short. In some cases a few succinct paragraphs will suffice. For a procedural decision the reasons required will usually be shorter (Paragraph 7).

Application and Procedural History

5. This is an application by the Landlord for an order of wasted costs against the Tenant's solicitors and an order of unreasonable costs against the Tenant. The Tribunal has adopted the convention in the

decision of referring to the parties as Landlord and Tenant rather than Applicant and Respondent.

6. On 13 June 2024 the Tenant applied for determination of premium and other terms for a new lease in respect of a first floor maisonette at 52 Perth Road, Leyton London E10 7PB. On 30 September 2024 the Tribunal issued “standard” directions requiring the parties to exchange various documents and to provide available dates for a hearing between 9 December 2024 and 31 January 2025. On 7 November 2024 the Tribunal fixed a hearing by video on 14 and 15 January 2025. On 10 January 2025 the Tenant’s solicitors informed the Landlord’s solicitors that they had received instructions to agree to the proposed premium and terms of acquisition of the new lease. The Landlord’s solicitors confirmed the proposed premium and terms of acquisition. On 10 January 2025 the Tribunal consented to the Tenant’s solicitors’ application to withdraw the proceedings for a new lease.
7. On 18 February 2025 the Landlord’s solicitors applied for an extension of time to submit an application for unreasonable costs under rule 13(1)(a) of the Tribunal Procedure Rules 2013 until 19 February 2025. The Rule 13 application should have been made by 7 February 2025. The Tenant opposed the application for extension of time. On 7 March 2025 Judge B McQueen granted the extension of time and directed that the rule 13 unreasonable costs application be dealt with on the papers and by summary assessment.
8. On 17 June 2025 Judge N Hawkes reviewed the papers submitted and decided that it was not suitable for a paper determination on the grounds that (1) lack of clarity of whether the Landlord was pursuing an order for wasted costs against the Tenant’s solicitors; (2) the facts of the case were unusual in that the Applicant was not in receipt of any email or telephone communication for a significant period of time from the point at which her landline failed until a “welfare check” was carried out at her home address; and (3) the level of costs (£17,473.56) sought was substantial. Judge Hawkes directed the Landlord’s solicitors to confirm whether they were seeking an order for wasted costs, and directed the Tenant and her solicitors to provide witness statements. Further Judge Hawkes ordered a face to face hearing on 20 August 2025.
9. The Landlord’s solicitors confirmed that the application was for wasted costs and unreasonable costs. The Landlord’s solicitors supplied no additional information in support of its application for wasted costs. The Tenant and her solicitors did not provide witness statements.
10. On 20 August 2025 Mr Lorenzo Leoni of Counsel appeared for the Landlord, and Mr Thomas Zhang of Counsel appeared for the Tenant. The Landlord had submitted a hearing bundle of 108 pages and a revised schedule of costs in the sum of £22,649.76. Both

Counsel supplied skeletons. The Tribunal had before it the electronic folder which included documents relating to the substantive proceedings. The Tribunal supplied a copy of the Landlord's expert report to the parties.

11. Mr Leoni on behalf of the Landlord made a preliminary application to bar the Tenant and her solicitors from taking any further part in the rule 13 application for their failure to provide witness statements in accordance with Judge Hawke's directions and invited the Tribunal to disregard their submissions and summarily determine the application in the Landlord's favour. Mr Zhang opposed the preliminary application.
12. The Tribunal decided not to bar the Tenant and her solicitors from taking a further part in the proceedings for the following reasons:
 - i. The Landlord had the burden of proving on the balance of probabilities that the Tenant and her solicitors had met the threshold criteria for making a costs order against them.
 - ii. The Tenant's solicitors had accepted paragraph 1 – 25 of the Landlord's submissions as providing a sufficient factual background. This was not a situation where the Tribunal was asked to make findings in the absence of an explanation from the Tenant and her solicitors. The Tribunal added that the weight it might attach to the explanation may be affected by the Tenant and her solicitors' failure to supply witness statements.
 - iii. The Tenant and her solicitors by instructing Counsel to represent them at the hearing had not ignored entirely their responsibilities to the Tribunal.
 - iv. The Tribunal was mindful of the overriding objective of dealing with cases fairly and justly and in particular of ensuring that the parties are able to participate fully in the proceedings.

Decision

13. The Tribunal makes no order for wasted costs against the Tenant's solicitors. The Tribunal is not satisfied on the balance of probabilities that the irrecoverable costs incurred by the Landlord in preparation for the hearing were a result of any improper, unreasonable or negligent act or omission on the part of the Tenant's solicitors.
14. The Tribunal makes no order for unreasonable costs against the Tenant. The Tribunal is not satisfied on the balance of probabilities

that the Tenant had acted unreasonably in conducting the proceedings.

Consideration

The Law

15. Section 60 of the 1993 Act permits the Landlord to recover reasonable costs incurred in connection with a new lease by the Tenant. The costs include those incurred by the Landlord in the investigation of the Tenant's right to a new lease, any valuation of the Tenant's flat obtained for the purpose of fixing the premium, and the grant of the new lease. The Tribunal understands that the parties have agreed on the amount of recoverable costs and that the Tenant has paid the amounts of £900 (legal fees) and £600 (valuation fees).
16. The costs that are at issue in this application are the litigation costs incurred by the Landlord in preparing for the hearing. These costs are not recoverable under section 60 and are subject to the general powers of the Tribunal to award costs under section 29 of the Tribunal Courts and Enforcement Act 2007. Section 29 specifies that costs of and incidental to all proceedings in the Tribunal are at the discretion of the Tribunal but the exercise of such discretion is subject to the Tribunal Procedure Rules.
17. Rule 13 of the Tribunal Procedure Rules restricts the power of the Tribunal to order costs to an order for wasted costs under section 29(4) of the 2007 Act, and to an order of unreasonable costs.
18. The power to make an order for wasted costs under rule 13(1)(a) and section 29(4) of the 2007 Act is concerned with the conduct of a "legal or other representative" of a party, and not the conduct of the party themselves. It is a distinct power which should not be confused with the power under rule 13(1)(b).
19. The key characteristic of "wasted costs" is that they are costs incurred by a party "as a result of any improper, unreasonable or negligent act or omission" on the part of a representative.
20. The leading authority on wasted costs is *Ridehalgh v Horsefield* [1994] Ch 205 in which Sir Thomas Bingham MR, considered the expressions "improper, unreasonable or negligent" the meanings of which, he considered, were not open to serious doubt:

"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 it is not unreasonable.

The term “negligent” was the most controversial of the three ... We are clear that “negligent” should be understood in an untechnical way to denote failure to act with the competence reasonably to be expected of ordinary members of the profession.

21. A key feature of the wasted costs regime is the requirement of a causal link between the improper, unreasonable or negligent conduct complained of and the costs said to have been wasted.
22. An order for unreasonable costs under rule 13(1)(b) is concerned only with the conduct of the parties and only with conduct that is unreasonable. Unlike an order for wasted costs there is no requirement to establish a causal nexus between the costs incurred and the unreasonable conduct
23. The Upper Tribunal in *Willow Court Management Co (1985) Limited v Alexander* [2016] UK UT 290 (LC) advocated the use of systematic or sequential approach to the question of unreasonable costs:

“At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the 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”.

24. Mr Leoni submitted that the sequential approach adopted in *Willow Court Management* had equal application to the question of whether a wasted costs order should be made.
25. The critical question for the Tribunal when considering applications for wasted costs and unreasonable costs is whether the threshold criteria have been met.
26. In *Willow Court Management* the Upper Tribunal emphasised that an assessment of the threshold criterion of unreasonable conduct involved an application of an objective standard of conduct to the facts of the case. Lord Justice Coulson in *Lea v Ilfracombe Management* [2024] EWCA Civ 1241 re-iterated the fact-specific nature of the test for unreasonable conduct and that it was not appropriate to give more general guidance as to what does or does not constitute unreasonable behaviour. Lord Justice Coulson suggested that a good practical rule is for the Tribunal to ask: “would a reasonable person acting reasonably have acted in this way? Is there a reasonable explanation for the conduct in issue”. Lord Justice Coulson added that

“To the extent that a party seeking its costs under rule 13(1)(b) might argue that the test in *Ridehalgh* and *Willow Court* for unreasonable conduct (and therefore obtaining a positive costs order in their favour) is unduly restrictive, the answer is that, not only is it the test set out in the authorities, it is also consistent with a generally ‘costs neutral’ regime. On the other hand, for the reasons I have explained, it is an impermissible gloss on the rule, and potentially much too restrictive, to elide unreasonable conduct with vexatious or harassing behaviour”.
27. The Tribunal having regard to the decision in *Ridehalgh v Horsefield* [1994] Ch 205 considers the threshold criteria of “improper, unreasonable or negligent” for wasted costs involve an objective standard of conduct to the facts of the case.

The Facts

28. In order to give a reference point to the facts the Tribunal sets out the basis of the Landlord’s complaint against the Tenant and her solicitors as set out in the Landlord’s initial submissions. The Tribunal acknowledges that Counsel for the parties enlarged on the initial submissions at the hearing and due consideration will be given to those arguments when the Tribunal assess the facts found against the objective standards of conduct complained about. At paragraph 31 of Submissions on Rule 13 costs dated 21 March 2025 the Landlord alleged:

“ In this case, there has been a serial failure by the Applicant and the Applicant’ instructed solicitors and valuer to comply with the Property Chamber Directions in the face of active attempts by the Respondent’s valuer and solicitors to try and elicit compliance. It is the Respondent’s submission that this failure coupled with the Applicant ‘going to ground’ and being uncontactable for instructions until 10 January 2025 is conduct which is unreasonable”.

Context: Overview of Enfranchisement Proceedings

29. The Tribunal starts its factual enquiry with an overview of “enfranchisement proceedings” which, in the Tribunal’s experience, have its own character distinct from the other types of proceedings commonly encountered by the Tribunal.
30. The Tenant’s right to a new lease is exercised by the service of a Notice of Claim upon the Landlord who in turn is required to serve a Counter Notice admitting or denying the Claim. If the Claim is admitted and there are no disputes on the validity of notices, a binding contract is formed in respect of the Tenant’s right to a new lease with the expectation that the parties will negotiate the terms of the lease including premium in line with the statutory provisions. The parties are not permitted to refer a dispute on terms to the Tribunal until two months have elapsed from the date of the counter notice, and any such application has to be made no later than six months from the date the counter notice was served on the Tenant in order to preserve the Tenants right for a new lease.
31. In this case the Notice of Claim and the Counter Notice admitting the Claim were dated 13 October 2023, and 15 December 2023. The Tenant made the Application to the Tribunal on 13 June 2024.
32. Where an application is made to the Tribunal, the proceedings have the following features:
 - i. The parties are invariably represented by solicitors. In the Tribunal’s experience it is extremely rare for an unrepresented party to make an application. A Tenant would normally have appointed a solicitor and a valuer prior to service of the Notice of Claim. In this case the Tenant in her Notice of Claim named Paul Human of Cartwright, Cunnigham Haselgrove & Co as her appointed representative. There is no mention of a valuer, although the proposed premium of £66,800 suggests the involvement of a valuer at the date of notice. The significant involvement of professional representatives in enfranchisement proceedings is in marked contrast to the high incidence of unrepresented parties in other proceedings before the Tribunal.

- ii. The evidence in enfranchisement proceedings is of a technical nature. It may involve legal argument in respect of a dispute on terms but more likely a dispute on the premium which will engage expert evidence from the valuers appointed by the parties. In the Tribunal's experience a Tenant is not expected to provide a witness statement or give evidence at the hearing, and more than likely will not attend the hearing.
- iii. Although an application has been made to the Tribunal, the negotiations between the parties' representatives continue in parallel which results in most applications settling before the hearing date. The Tribunal estimates in the region of 85 to 90 per cent of all applications settle which is a much higher rate than for other proceedings before the Tribunal.
- iv. In view of the involvement of the parties' representatives and the high rate of settlement, the Tribunal does not actively case manage the majority of enfranchisement cases. Instead standard directions are issued which are in the same format for all enfranchisement cases except the date of compliance.

Directions and Chronology of the Parties Handling of the Proceedings

- 33. The Tribunal turns its attention to the standard directions in this case which were issued on 30 September 2024.
- 34. Paragraph 1 stayed any application to determine the landlord's recoverable costs.
- 35. Paragraphs 2-4 were headed "**Lease Terms**" and required as follows:
 - 2.** The landlord must by **28 October 2024** submit a draft lease to the tenant for approval.
 - 3.** The tenant must by **11 November 2024** return the draft lease to the landlord with any amendments shown in red.
 - 4.** The landlord must by **25 November 2024** provide the tenant with a list of the terms of the draft lease that remain in dispute.
- 36. The Tribunal understands from Mr Leoni that the Tenant's solicitors complied with direction 3. The Landlord's solicitors complained that the Tenant's solicitors failed to respond to direction 4. The Tribunal observes that there was no direction for a Tenant's response. The Tribunal adds that there was no substantive dispute between the parties on the terms of the lease. This is clear

from the Notices of Claim and the Tribunal application form and confirmed by the action of the Tenant's solicitors on 7 January 2025 approving the draft lease supplied by the Landlord in accordance with direction 4.

37. Paragraphs 5-7 was headed “**Valuation**” and required as follows:
- 5. The parties’ valuers must by **21 October 2024** exchange valuation calculations and meet to clarify the issues in dispute. The meeting may be by way of video or telephone conferencing.
 - 6. The parties must by **25 November 2024** exchange statements of agreed facts and disputed issues and send copies to the Tribunal.
 - 7. The parties must exchange expert reports at least **three weeks (24 December 2024¹)** before the hearing date notified to them in accordance with the following directions.
38. Mr Leoni made no representations about potential non-compliance of directions 5 and 6 by the Tenant’s representative. Mr Leoni informed the Tribunal that the Statement of Agreed Facts and Disputed Issues was not signed until the 11 December 2024. The Tribunal is satisfied that the Tenant’s Valuer was not responsible for the delay which was occasioned by the actions of the parties’ Valuers revising on several occasions the Draft Statement as stated in the Landlord’s valuers fee note. The Tribunal notes that although the signed Statement identified five issues in dispute, only one of those five issues, the valuation of the long lease with vacant possession, amounted to a substantive dispute.
39. The Landlord’s principal submission concerned direction 7 contending that there had been a complete failure on the part of the Tenant’s Valuer to exchange his expert report by the date ordered or at any point thereafter. However, the Landlord’s submission overlooks the fact the parties’ Valuers had agreed not to exchange reports to enable the Tenant’s valuer to put an offer of a proposed premium by the Landlord’s valuer to the Tenant which if accepted would have avoided the need for a hearing and saved the costs of preparing experts reports. Given the agreement between the parties’ representatives, the Tribunal does not consider there has been a breach of direction 7 by the Tenant’s representative. The Tribunal notes that the Landlord’s expert report was not ready for exchange until 8 January 2025. The Tribunal’s accepted practice is to permit parties particularly those who are represented to agree to

¹ Inserted by the Tribunal. The Standard Directions did not specify a date just the period of three weeks before the hearing.

vary dates of compliance with directions without reference to the Tribunal provided it does not affect the hearing date.

40. The Landlord's real complaint was about the Tenant's failure to communicate her acceptance or otherwise of the premium offer in good time before the hearing. The Tribunal will examine this later in the decision.
41. Paragraphs 8-14 were headed "**Listing and Hearing**". The Tribunal considers first paragraphs 8-9 which state as follows:

8. It is proposed that the hearing take place by way of remote video hearing. **Between Monday 21 October 2024 - Friday 25 October 2024** each party must return to the Tribunal the attached listing questionnaire showing the availability of the parties' expert witnesses and advocates during the period of **Monday 09 December 2024 - Friday 31 January 2024**. Any representations relating to the listing of the case should be set out in the questionnaire.

9. Within **three weeks** of receipt of the completed listing questionnaire the Tribunal will list the case for hearing. The Tribunal will immediately notify the parties of the hearing date.

42. The parties' representatives returned the listing questionnaires within the period specified by the directions. There was, therefore, no breach of directions by the Tenant. The completed questionnaire for the Tenant gave a time estimate of one day for the hearing and stated that the Tenant's solicitor was unavailable for the two weeks commencing 23 December 2024. The Landlord's completed questionnaire gave a time estimate of two days for the hearing, and stated that the Landlord's expert witness was unavailable from the 19 December 2024 to 10 January 2025.
43. On 7 November 2024 the Tribunal notified the parties that a hearing had been arranged by video on 14 and 15 January 2025.
44. Paragraphs 10 and 11 informed the parties about the arrangements for a video hearing and that the Tribunal did not intend to inspect the property.
45. Paragraphs 12 and 13 dealt with the bundle and stated as follows:

12. The parties must agree a bundle of documents relevant to the outstanding issues. This must consist of a single document in Adobe PDF format. The document bundle must have an index and must be paginated. The documents must, so far as possible, be in chronological

order. The applicant must prepare the bundle, and email a copy to each respondent and to the Tribunal at London.Rap@justice.gov.uk **at least two weeks before the date of the hearing (31 December 2024²)**. The subject line of the email must read: "BUNDLE FOR DETERMINATION: [Case reference], [Property address]". If a party is unable to produce a digital bundle it must contact the case officer as soon as possible, explaining why, and alternative directions will be considered.

13. The bundle must include copies of the following:

- ◆ the application
- ◆ these directions
- ◆ the claim notice and counter notice
- ◆ up to date office copies of the entries at H M Land Registry of the freehold title, any intermediate leasehold titles and the flat leasehold title, with plans
- ◆ any intermediate leases
- ◆ the existing flat lease and lease plan
- ◆ the new draft lease and lease plan with any disputed terms highlighted in red
- ◆ each parties' valuation report with full details of all comparables and a memorandum of agreed facts
- ◆ a brief summary of the issues in dispute to be determined by the tribunal

46. It is at the point of the preparation of the bundle that the relationship between the parties' solicitors became strained and it is necessary to set out the correspondence between them.
47. On 19 December 2024 the Landlord's solicitors emailed the Tenant's solicitors noting that the bundle was required by 31 December 2024, and that due to the Christmas holidays and office closures it would be most helpful to provide the draft bundle index as soon as possible. It would appear from a subsequent email dated 22 December 2024 from the Landlord's solicitors, that the Tenant's solicitor had contacted the Landlord's solicitors by phone and had left a voicemail. The Tribunal does not know the contents of the voicemail but the tenor of the 22 December 2024 email suggested that the Landlord's solicitors were not unduly worried and were attempting to tie up the loose ends.
48. The Tenant's solicitors did not comply with direction 12 and provide a bundle to the Tribunal and the Landlord's solicitors by 31 December 2024.

² Inserted by the Tribunal

49. On 6 January 2025 the Legal Director of the Landlord's solicitors emailed the Tenant's solicitors saying that

"This matter is set down for hearing on 14 January 2025 and as at today's date none of the terms of acquisition of a new lease have been agreed between the parties.

Can you please provide a draft Hearing Bundle Index for approval by return and immediately revert concerning the outstanding lease terms.

Given the proximity of the hearing, if we do not receive these documents/comments by close of business on 7 January 2025 we will have to refer your client's failure to comply with Directions to the Property Chamber as this is prejudicial to our client's preparation for the scheduled hearing".

50. The Tenant's solicitors responded by close of play on 7 January 2025:

"Thank you for your recent emails and apologies for the delay in replying, where I had understood that further negotiations were taking place between our respective client's valuers and was trying — with the hope that a settlement would soon be reached — to limit the work involved in dealing with the Tribunal.

While I am still hopeful about reaching an agreement prior to actual hearing, I confirm that the Lease is approved in the form attached to your email of 22 November 2024 timed at 08:01, and I attach a travelling draft having merely removed your highlights and comments.

As to the hearing bundle, I confirm that this will be comprised of the matters set out in paragraph 13 of the Directions dated 30" September 2024, including:

- (a) the attached travelling draft Lease;
- (b) each parties' valuation report, where I of course only possess my client's valuation report and look forward to receipt of your client's valuation report for the purposes of the bundle; and
- (c) the brief summary merely highlighting the contents of the Statement of Agreed Facts (copy attached).

If you would provide me with your client's valuation report I can then prepare the draft bundle for your review".

51. The Landlord's solicitors responded the same day thanking the Tenant's solicitors for confirming agreement of the lease save the premium, and advising that the Landlord's expert report would be ready for exchange at 10.00am on the 8 January 2025.

52. On the 8 January 2025 the Landlord's solicitors emailed the Tenant's solicitors stating that she understood that the Landlord's valuer was awaiting a response to an offer made before Christmas and that the Tenant's valuer was struggling to get hold of the Tenant.

53. The Tribunal also sent an email on the 8 January 2025 informing the parties' representatives to submit a bundle as a matter of urgency for the hearing next week. On receipt of this email the Landlord's solicitors emailed the Tenant's solicitors requesting information on the exchange of experts' reports and a copy of the draft bundle index.

54. On 9 January 2025 the Legal Director of the Landlord's solicitors sent a letter by email to the Tribunal which was copied with a covering email to the Tenant's solicitors:

"We refer to the abovementioned matter and the scheduled hearing of 14 & 15 January 2025.

We note that despite a number of requests to their solicitors and instructed valuer (and in breach of the Directions issued by the Property Chamber on 30 September 2024), the Applicant has to date failed to:

- i) Provide the required Hearing Bundle; and
- ii) Exchange Experts Reports.

Given the proximity of the scheduled hearing, this failure is not only prejudicial to the Respondent's preparations for the hearing but has also resulted in the unnecessary incursion of additional costs.

The Respondent now respectfully requests that the Property Chamber issue a Direction requiring the Applicant to immediately supply the required Hearing Bundle and to exchange Experts Reports, failing which the Applicant be de-barred from adducing evidence at the scheduled hearing.

The Respondent also fully reserves its position to seek an Order for payment of their costs pursuant to the provisions of Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the basis that the Applicant has acted unreasonably in bringing and conducting the proceedings".

55. On the 9 January 2025 at 9.38 am the Tenant's solicitors responded to the correspondence from the Landlord's solicitors:

"As to the hearing bundle index, I propose as follows:

- (1) Application dated 13 June 2024.
- (2) Directions dated 30 September 2024.
- (3) Section 42 Notice dated 13 October 2023.
- (4) Section 45 Counter Notice dated 15 December 2023.

- (5) Up-to-date office copies of the superior leasehold title, leasehold title and Lease dated 10 March 1972
- (6) Proposed Lease in the form of a clean copy of the version attached to my email of 7 January timed at 16:03.
- (7) Statement of Agreed Facts and Addendum Statement of Agreed Facts (copy attached), in lieu of any expert reports as those no longer appear necessary, though can of course include such expert reports if desired and if already prepared.

I do not propose including a “brief summary of the issues in dispute”, given that the parties’ solicitors and surveyors are in agreement, and instead attach draft correspondence (*to the Tribunal*) proposing that — given this agreement — this matter be resolved by way of a paper hearing so as to avoid the need for the Video Hearing on 14 and 15 January 2025.

Unfortunately I am without instructions regarding the proposed lease and premium as agreed between the parties’ solicitors and surveyors, so cannot confirm that either is accepted, so must proceed with the existing Tribunal proceedings until instructed otherwise even while trying to mitigate the work involved”.

- 56. The Tenant’s solicitors’ draft letter to the Tribunal referred to above stated that

“We write regarding the above and confirm that the parties’ solicitors and surveyors are in agreement regarding the proposed lease and premium, as outlined in the Hearing Bundle, however the Applicant has yet to provide instructions regarding either and accordingly we — as the Applicant’s solicitors — must proceed with the existing Tribunal proceedings until instructed otherwise.

However given that agreement we believe that the Video Hearing on 14 & 15 January is no longer necessary and that instead this matter can be determined via a paper hearing at the Tribunal earliest convenience, so as to avoid incurring the Tribunal's unnecessarily.

We confirm that the Respondent's solicitors are in agreement with the above”.

- 57. The Landlord’s solicitors responded at 11.48am to the Tenant’s solicitors’ email of 9.38am. The Landlord’s solicitors commented in red against various items of the hearing bundle index. The solicitors requested a copy of the Addendum Statement of Agreed Facts signed by both Valuers, and indicated that it was unlikely that their client would agree to a paper determination but they would take instructions on it. The Landlord’s solicitors confirmed at 12.34pm that their client was not agreeable to a paper determination.
- 58. . At 12.57pm the Tenant’s solicitors replied to the emails at 11.48am and 12.34pm agreeing to include copies of the freehold title and the intermediate lease. The solicitors enclosed the Addendum of Agreed Facts signed by both experts. The solicitors noted that the

possible instructions to file the Expert Report with the Tribunal directly but queried the need given the contents of the Addendum. Finally the Tenant's solicitors noted that the Landlord wished to proceed with a video hearing rather than on the papers even though the parties' solicitors and surveyors were in agreement.

59. At 14.43pm the Landlord's solicitors clarified why their client had rejected the offer of a paper determination:

"We cannot be certain that the Tribunal will make a Determination of £120,000 based on our client's valuers agreeing that it is the appropriate premium. Should the Tribunal (as an expert panel) choose to review the evidence and make their own determination, it is vital that our client has an Expert Report that they can rely on and that their Expert Valuer and Counsel have the opportunity to make the usual representations".

60. The Tribunal observes that the Addendum to the Agreed Facts dated 8 January 2025 signed by the parties' valuers stated that

"1 The original statement of agreed facts provided by the two Expert Valuers documented that, other than a nominal difference in the Valuation Date and the unexpired term, the principal difference of opinion as to the premium to be assessed rested on the long lease, vacant possession value of the maisonette.

2 Further discussions about the flat value have resulted in both Expert Valuers agreeing that the appropriate premium in this lease extension claim is £120,000

3 No further valuation issues remain for agreement or determination".

61. On 10 January 2025 the Landlord's solicitors forwarded a copy of the Landlords valuer's report in readiness for the hearing. The solicitors requested that this expert report was not shared with the Tenant's representatives. The Tribunal observes that it would not have been able to admit this report in evidence unless it was provided to the Tenant. Further the Tribunal's guidance is clear that the Tribunal should not accept documents from one party unless it has been copied to the other side.

62. On 10 January 2025 the Tenant's solicitors informed the Landlord's solicitors that

" Yes it appears that my client — who does not possess a mobile phone — lost her landline connection in late December due to external connectivity issues, and after realising this has still of today only been promised that this would be resolved in a few days. This also affected her ability to go online and read emails, with all of this only uncovered after a colleague paid my client a home visit, and where my client has since used the local library services to provide me with instructions.

I am now in receipt of instructions to agree the proposed Lease in the form attached to your email of 9 January timed at 11:48, and the proposed premium of £120,000, so believe that the terms of acquisition have been agreed”.

Kindly confirm by reply and I shall promptly thereafter submit an Application to Withdraw with the Tribunal”.

63. The Landlord’s solicitors gave the necessary confirmation and the Application was duly withdrawn.
64. The Landlord’s solicitors stated that by virtue of the Tenant’s defaults it was constrained to protect its position by preparing fully for the scheduled hearing. They pointed out that this case involved a dispute about a premium where the value was significant as demonstrated by the agreed amount of £120,000. The solicitors delivered the brief to Counsel on the 7 January 2025 and the brief fee was incurred in full by the 9 January 2025. They incurred the fees of a Grade A Solicitor in preparing brief to Counsel which were recorded on the Costs Schedule as having taking place on the 8 January 2025, and those of the Valuer for preparing an expert Witness report.
65. Paragraphs 15 and 16 of the directions concerned “**Evidence from Abroad**”, and “**Applications**”.
66. Paragraphs 17 and 18 are headed “**Non-compliance with Directions**”. Paragraph 17 states that “if any party fails to comply with these directions the tribunal may in any event determine the issues in dispute and value the interests to be transferred on the basis of such information and evidence as is available”.
67. The Tribunal observes that if the proceedings had not been withdrawn, the Tribunal more than likely would have proceeded to determine the dispute regardless of any non-compliance with directions. In short the Tribunal would have expected the parties to have been ready for the hearing, and that they would have incurred costs for that preparation as an inevitable consequence of the directions.

The Tribunal Assessment of Facts

68. The Tribunal consider its assessment in two time frames: the period up to around mid December 2024 and the period thereafter until the proceedings were withdrawn.

Period up to around mid December 2024

69. The Tribunal finds that in the first period until mid December 2024 there was constructive engagement between the parties’

representatives. Their solicitors had complied with the directions for the terms of the lease, and in effect had agreed the terms of the lease. Their solicitors had supplied the Tribunal with the listing questionnaires and a hearing date had been fixed. The valuers had discussed their respective valuations, and had produced an agreed statement of facts which reduced the dispute to one substantive matter: the value of the long lease vacant possession. Although the potential value of the premium was high, this was due to one factor: the short unexpired term of 39.20 years of the existing lease. The valuers had agreed the method for calculating the value of the existing lease which effectively was an agreed percentage of the long leasehold value plus the reversionary value. The Tribunal is satisfied that this was a straightforward case involving standard valuation principles. The hearing of such a case in the Tribunal's experience would normally be conducted by the respective parties' valuers.

70. The Tribunal finds during this period the Tenant and her representatives had not breached the directions. The Landlord took no issue with the Statement of Agreed and Disputed Facts being signed on 11 December 2024. The Tenant's representatives had done everything required by the directions in readiness for the hearing on 14 and 15 January 2025. The date for the exchange of expert reports was not until 26 December 2025. The Landlord supplied no evidence of correspondence during this period of chasing the Tenant's representatives for replies.
71. The Tribunal finds that as at mid- December 2024 the case was ready for hearing except one matter, the experts' reports. The parties' valuers had agreed to delay the exchange of experts reports because of the Landlord's offer of a revised premium. The Landlord's solicitors said its valuer made this offer before Christmas but as yet have not given the date. The Tenant's representative agreed to put the offer to the Tenant.
72. The Tribunal observes that it was the action of the Landlord not one of the Tenant that interrupted the preparation for the hearing. The Tribunal considers that if the Landlord's offer had not been made, the exchange of experts' reports would have taken place and the case would have proceeded as expected by the directions.

Period from 19 December 2024 to 10 January 2025

73. The Tribunal turns its attention to the second period commencing on 19 December 2024 when the Landlord's solicitors sent an email indicating that it would be helpful to have a draft bundle index in view of the impending closure of the solicitors' offices during the Christmas and New Year holiday period. The Tribunal noted that the Tenant's solicitors responded to the request by phone and left a voicemail. The parties have not informed the Tribunal of the contents of the voicemail but it did not appear to cause the

Landlord concerns having regard to the subsequent email of the Landlord's solicitors dated 22 December 2024.

74. The Tribunal has already recorded that the Tenant's solicitors failed to comply with the direction to send a bundle of documents by the 31 December 2024 to the Tribunal and the Landlord's solicitor. The Tribunal considers that the Tenant's solicitors had good reasons for non-compliance: (1) the bundle could not be completed without the inclusion of the experts' reports which had not been prepared by the valuers by agreement, and (2) the Tenant's solicitors understood that further negotiations were taking place between the parties' valuers in the hope that a settlement would be reached which would save the parties the costs of preparing for and attending the Tribunal hearing.
75. The Tribunal adds that the documents other than the experts' reports to be included in the bundle were non-contentious and already in the possession of the Landlord's solicitors. The Landlord's solicitors knew the scope of the dispute.
76. The Tribunal observes that the timing of the direction for the hearing bundle took place during the Christmas and New Year holidays when most solicitors' offices were closed whilst the Tribunal Office was only open for specific days during this period. The Tribunal notes as a practical consideration that even if the bundle had been served on 31 December 2024 it was unlikely that any work would have been done on it by the solicitors and by the Tribunal until the week commencing 6 January 2025.
77. On 6 January 2025 the Legal Director for the Landlord's solicitors became involved resulting in a marked change in tone in their dealings with the Tenant's solicitors. The Legal Director pointed out that the bundle had not been delivered and no terms of acquisition had been agreed. The Legal Director requested that the Tenant's solicitor provide a draft Hearing Bundle Index for approval by return and immediately revert concerning the outstanding lease terms. The Legal Director gave a deadline of close of business of 7 January 2025 for the Tenant's solicitors to comply with her request, otherwise the Tribunal would be informed of the breach of directions.
78. The Tribunal is satisfied that the Tenant's solicitors met the Landlord's solicitors' request. Before the deadline of close of business the Tenant's solicitors gave their approval to the draft lease previously supplied by the Landlord's solicitors and provided a list of documents for inclusion in the bundle. The Tenant's solicitors requested a copy of the Landlord's expert report for inclusion in the bundle, and was informed this would be ready on the 8 January 2025.

79. The Tribunal considers that at this point the Tenant's solicitor realised that he could not await any longer for instructions from his client regarding the premium offer made by the Landlord and so he took immediate steps to ensure that the case could proceed on the 14 January 2025 at minimum costs to the parties.
80. The Tenant's solicitors secured an Amendment to the Agreed Statement of Facts signed by the parties' valuers and dated 8 January 2025 with the effect that a premium of £120,000 had been agreed. This meant that there were no outstanding matters of dispute on the terms of the acquisition of the new lease. In view of this the Tenant's solicitors proposed to the Landlord's solicitors that a letter be sent to the Tribunal explaining that the parties' solicitors and surveyors were in agreement regarding the proposed lease and premium but as the Tenant's solicitors had no instructions from the Tenant on the proposed lease and premium the Tenant's solicitors must proceed with the hearing. The Tenant's solicitors then stated given the agreement they believed that a video hearing was no longer necessary and the matter could be dealt with on the papers at the Tribunal's earliest convenience.
81. The Landlord did not consent to a paper determination. The reason given at the time of the proposal was that the Landlord could not be certain that the Tribunal would make a determination of £120,000 for the premium based on the parties' valuers' agreement, and that the Tribunal might decide as an expert panel to review the evidence. The Tribunal notes that the Landlord's solicitors had agreed to the Tenant's solicitors proposal for the bundle to include a fully signed version of the Addendum and for a letter to be sent to the Tribunal confirming that the bundle would not include a brief summary of the issues in dispute because there were none.
82. The Landlord's solicitors in their subsequent submissions contended that the Tenant's solicitors and valuer had no instructions to agree the terms of the lease and the premium of £120,000 without specific instructions from the Tenant. The Landlord's solicitors did not raise this objection when refusing the determination on the papers.
83. The Tribunal accepts that the Landlord is entitled not to consent to a paper determination and can do so without giving reasons. The Tribunal's focus in this application, however, is on the actions of the Tenant's representatives.
84. The Tribunal is satisfied that the Tenant's representatives had the authority of the Tenant to adopt the approach they took in relation to the terms of the lease and the value of the premium. The Notice of Claim signed by the Tenant appointed the Tenant's solicitors to act for her in connection with the Claim. The Application for a New Lease to the Tribunal named the Tenant's solicitors as her representative.

85. The Tenant's solicitor was explicit in his dealings with the Landlord and the Tribunal that the Tenant's representatives could agree the lease and the premium in their capacity of professional advisers instructed by the Tenant to progress her claim for a new lease before a Tribunal. What they could not do was to make admissions on behalf of the Tenant that she had agreed to the terms of the lease including the premium. The Tribunal is dealing with experienced practitioners who have been transparent on the scope of their instructions. The Tribunal considers it highly improbable that the Tenants' representatives would have acted without instructions which would have put them in breach of their obligations to the Tenant and of their duties to the Tribunal.
86. The Tribunal does not agree with the Landlord's reservations about a determination on papers. In its opinion a Tribunal would not have questioned the agreements made by the professional representatives in this case. There was no evidence in the proposed hearing bundle which undermined the agreements reached. Given these circumstances the Landlord's fears that the Tribunal might review the evidence was not realistic.
87. The Tribunal finds that in relation to the second period from the 19 December 2024 the Tenant's solicitors took constructive action to remedy the breach of directions in connection with the provision of bundles on 31 December 2024 and to minimise the prejudice caused by the breach to the Landlord and the Tribunal. The Tenant's solicitor engaged fully with the Landlord's solicitors on his return from the Christmas holiday on 6 January 2025.
88. By the 9 January 2025 within five working days of the date of the breach, the Tenant's solicitors had agreed the contents of the draft bundle with the Landlord's solicitors which included a copy of the approved new lease for the property and provided an Amended statement of agreed facts which resolved the outstanding issue of the value of the premium and eliminated the one substantive area of dispute identified on the 11 December 2024. This meant that the directions were back on track and the hearing could go ahead on 14 January 2025.
89. Given the above circumstances the Tenant's solicitors made a sensible proposal to determine the application on the papers. If the Landlord had agreed to the proposal, it would have resulted in savings in the costs of attendance by the parties at the hearing, and enable the Tribunal to cancel the video hearing on 14 January 2025.
90. Mr Zhang for the Tenant questioned the Landlord's solicitors' assertion that the costs of preparing for the hearing were wasted costs. Mr Zhang pointed out that the directions required the parties to incur costs in readiness for the hearing, and if the hearing had gone ahead the costs would not have been wasted. The

Tribunal considers that Mr Zhang's submission has force, particularly in the light of its finding that the Tenant's solicitors had got the directions back on track so that the hearing could go ahead on 14 January 2025.

91. Mr Zhang's submission highlights that the Landlord's principal grievance with the Tenant's conduct and that of her solicitors was her failure to respond promptly to the Landlord's offer of a revised premium which was made on a date in December 2024 before Christmas. The Landlord's solicitors maintained that if they had received notification of the Tenant's agreement to the revised offer earlier then they would not have expended costs on instructing Counsel and their expert witness to prepare for and attend the hearing on the 14 January 2025.
92. The Tenant's solicitors explained that the Tenant had not responded to their communications on the proposed offer because of a fault with her landline in December 2024 which meant that she could not receive phone calls and her internet was down. The Tenant's solicitors said that the Tenant had only recently received promises that the problem would be resolved in a few days. The Tenant did not own a mobile phone.
93. The Tenant's solicitors only discovered this problem when they made a welfare visit on the Tenant at her home on the 9 January 2024. The Tenant's solicitors stated that they had no prior indication that she was not receiving emails and phone calls, and it was only with the passage of time and lack of a sensible reason given the Tenant's history they decided to make a welfare visit. When the problem was uncovered the Tenant used the IT facilities at the local library to read the correspondence from her representatives. Having been provided with the necessary information, the Tenant authorised her solicitors to accept the offer of the revised premium and the remaining terms in the lease resulting in the settlement of claim which enabled the withdrawal of the Tribunal proceedings on 10 January 2025.
94. Mr Leoni for the Landlord submitted that the Tenant's failure to provide instructions on the revised premium offer was an acute failing and not the conduct expected of any reasonable party to litigation. Mr Leoni asserted that the Tenant knowing full well in advance of the hearing date should have sought ways to engage with her representatives so that she could comply with directions. Likewise Mr Leoni contended that the Tenant's solicitors should have been pro-active in seeking instructions from the Tenant and should not have waited until 9 January 2025 to have conducted a welfare visit.
95. Mr Leoni's submissions give the impression that responding to the Landlord's revised offer of premium was a requirement of the Tribunal. It was not. The Tribunal at paragraph 32 above described

the distinctive features of “Enfranchisement Proceedings”. One of which is that the parties’ representatives continue with their negotiations in parallel with the Tribunal proceedings which results in a much higher settlement rate than in other Tribunal proceedings and often the decision to settle is made just before the hearing as was done in this case. The Tribunal has no control on how the parties’ representatives conduct their parallel negotiations. This is a constant source of frustration for the Tribunal particularly as the parties normally have about six months prior to the application to reach a settlement. The Tribunal, however, accepts that the negotiations will continue and that inevitably about 90 per cent of all enfranchisement applications will settle prior to the hearing. The Tribunal manages this specific set of circumstances by the use of standard directions which includes a hearing by video so that no hearing room is lost if the application is settled at the last minute, and by fixing a date of a hearing which acts as a cut off point for the negotiations and when the Tribunal will make a determination on whatever evidence it has before it.

96. In view of the Tribunal’s lack of control of the negotiations by the parties’ representatives which run in parallel to the proceedings, the Tribunal questions whether the manner in which the parties manage the negotiations can be properly regarded as conduct for the purposes of assessing whether an order for unreasonable and/or wasted costs should be made. If it is relevant, the Tribunal makes the following findings:
- i. The Landlord’s offer of a revised premium interrupted the parties’ preparation for the hearing. If the offer had not been made, the Tribunal is satisfied that the parties would have fulfilled the outstanding directions and have been ready for the hearing.
 - ii. It appeared that the Landlord imposed no deadline by which the offer should be accepted. The Landlord’s decision to accede to the Tenant’s acceptance of the offer on 10 January 2025 suggests that offer was open until the date of the hearing on 14 January 2025.
 - iii. The Landlord has not supplied the date of when the offer of the revised premium was made. The Tribunal assumes that the offer was made after 11 December 2024 when the Valuers signed the Statement of Agreed and Disputed Facts. This meant that the offer would have been communicated to the Tenant just before the closure of the solicitors’ offices for the Christmas holidays.
 - iv. The Tribunal is satisfied that the Tenant’s representatives sent the Landlord’s offer by email to the Tenant and attempted to contact the Tenant by phone.

- v. The parties were working to the assumption that the Tenant would accept the offer.
- vi. When the Tenant's solicitor returned to work on 6 January 2025 and finding that there were no communications from the Tenant, he gave priority to ensuring that proceedings could go ahead on 14 January 2025. Once the solicitor had done that he took steps to find out why the Tenant had not responded to the communications on the offer by arranging a welfare visit to the Tenant's home.
- vii. The solicitor discovered on the welfare visit that there was a fault with the Tenant's landline which was the reason why she was not receiving the communications from her representatives. Arrangements were then made for the Tenant to view the correspondence at the local library. Following which the Tenant agreed to the revised offer of premium and the terms of the new lease, which resulted in the withdrawal of the Application on the 10 January 2025.

Whether a Wasted Costs Order should be made against the Tenant's Solicitors under rule 13(1)(a) of the Tribunal Procedure Rules 2013

- 97. An application for wasted costs under rule 13(1)(a) is a distinct power with a different legal basis from an application for unreasonable costs under rule 13(1)(b). The Tribunal notes that although the Landlord's solicitors confirmed in response to directions that they were also applying for an order for wasted costs they presented no separate case from the case for unreasonable costs. It was left to Mr Leoni at the hearing to develop the case for wasted costs.
- 98. The Landlord's case for wasted costs was based on the following factual propositions:
 - i. The Tenant and her solicitors consistently failed to comply with Tribunal directions.
 - ii. The Tenant's solicitors failed to engage with the Landlord's representatives despite active attempts by the Landlord's representatives to secure compliance with Tribunal directions.
 - iii. The Tenant's solicitors were not in receipt of instructions from the Tenant and, therefore, remained unable in the week before the scheduled hearing to agree terms.

- iv. The Tenant's solicitors were not proactive in seeking instructions from the Tenant in respect of the Landlord's offer of a revised premium.

99. The Tribunal summarises its findings which are set out in detail in paragraphs 68 to 96:

- i. During the period from September 2024 to mid-December 2024 the Tenant and her representatives had done everything required by the directions in readiness for the hearing on 14 and 15 January 2025. It was the Landlord's late offer of a revised premium made just before the Christmas holiday which interrupted the preparation for the hearing and delayed the exchange of the expert witness report.
- ii. The Tenant's solicitor failed to comply with the direction to send a bundle of documents on 31 December 2024. The Tribunal considers that the Tenant's solicitors had good reason for non-compliance: (1) the bundle could not be completed without the inclusion of the experts' reports which had not been prepared by the valuers by agreement; and (2) the Tenant's solicitors understood that further negotiations were taking place between the parties' valuers in the hope that a settlement would be reached.
- iii. When the Tenant's solicitor returned to work on 6 January 2025 from the Christmas holiday he realised that he could not await instructions from the Tenant about the revised premium offer and took immediate steps to ensure that the case could proceed on the 14 January 2025 at minimum costs to the parties.
- iv. By the 9 January 2025 five working days after 31 December 2024 the Tenant's solicitors had agreed the contents of the draft bundle and provided an Amended Statement of Agreed facts which resolved the remaining disputed issue identified on the 11 December 2024. This meant that the directions were back on track and the hearing could go ahead on 14 January 2025. The Tenant's solicitors proposed a determination on the papers which was eminently sensible as there were no disputed issues and would have saved the parties the costs of the hearing. The Landlord did not give its consent to a paper determination as it was entitled to.
- v. Throughout the proceedings the Tenant's representatives engaged constructively with the Landlords' representatives including the period from the 6 January 2025 when the stance of the Landlord's solicitors became more robust. The only time that the Tenant solicitors did not respond to the

Landlord's solicitors' emails was during the Christmas holiday period.

- vi. The Tenant's representatives were acting under the instructions of the Tenant to progress the application for determination by the Tribunal. The instructions enabled them to agree the terms of the lease and the premium in their capacity of professional advisers. What they could not do until 10 January 2025 was to make admissions on behalf of the Tenant that she had agreed to the terms of the lease including the premium.
 - vii. The Tenant's representatives had communicated the Landlord's offer of a revised premium by email and phone just before the Christmas holiday. At the time of the communications the Tenant's Representatives had no reasons to suspect that the Tenant was not receiving them.
 - viii. When the Tenant's solicitor returned to work on 6 January 2025 and finding that there were no communications from the Tenant, he gave priority to ensuring that proceedings could go ahead on 14 January 2025. Once the solicitor had done that he took steps to find out why the Tenant had not responded to the communications on the Landlord's offer by arranging a welfare visit to the Tenant's home. Following the welfare visit the Tenant's solicitor discovered that the Tenant was not receiving the communications from her representatives because of a fault with her landline which was outside the Tenant's solicitor's control January 2025. Arrangements were then made for the Tenant to view the correspondence at the local library. Following which the Tenant agreed to the revised offer of premium and the terms of the new lease, which resulted in the withdrawal of the Application on the 10 January 2025.
100. The Landlord's case for wasted costs against the Tenant's solicitors was primarily based on its assertion that the Tenant's solicitors had consistently failed to comply with directions and had not engaged with the Landlord's solicitors. The Tribunal findings of fact showed otherwise. The Tenant's solicitors had been in regular contact with the Landlord's solicitors regarding progress and had complied with the directions except the provision of bundles on 31 December 2024. The Tenant's solicitors had good reasons for not sending the bundle and remedied their breach by ensuring that the case was ready for hearing on 14 January 2025.
101. The Landlord also relied upon its argument that the Tenant's solicitors should have been pro-active in obtaining instructions from the Tenant on the Landlord's offer of the revised premium. The Tribunal observed that a distinctive feature of Enfranchisement Proceedings is that the parties' representatives

continue with their negotiations in parallel with the Tribunal proceedings. The Tribunal has no control over these negotiations. The Tribunal questioned whether the parties' negotiations outside the proceedings constituted conduct for the purposes of assessing whether an order for unreasonable and/or wasted costs should be made. Despite its reservations the Tribunal found that the offer was made just before the Christmas holidays with no deadline attached. The Tenant's representatives had communicated the offer to the Tenant by email and by phone. When it became apparent that no response was forthcoming from the Tenant, the Tenant's solicitors gave priority to ensuring that the proceedings could go ahead on 14 January 2025, and then arranged a welfare visit to the Tenant at her home. The welfare visit discovered that the Tenant had a fault with her landline which meant that she was not receiving phone calls and emails. Arrangements were then made for the Tenant to view the correspondence at the local library. Following which she agreed to the terms of lease including the premium and the application was withdrawn on 10 January 2025.

102. The Tribunal is satisfied on the facts found that the Tenant's solicitor's actions when viewed objectively were those of a competent solicitor acting with due diligence.
103. The Tenant solicitor's reasons for not complying with the direction on the bundle met the objective standard of reasonableness. A reasonable solicitor acting reasonably faced with the circumstances of no expert report and the expectation that the Tenant would agree to the revised premium would have taken the same decision as the Tenant's solicitors.
104. Likewise the Tenant's solicitors actions in relation to the Landlord's offer of a revised premium were those of a reasonable solicitor acting reasonably. The Tenant's solicitors had communicated the offer to the Tenant, and when it became apparent that no response was forthcoming from the Tenant, they gave priority to preparation for the hearing and then arranged a welfare visit. The Tenant's reason for not responding (a fault with the landline) was outside the control of the Tenant's solicitors and not reasonably foreseeable.
105. **The Tribunal makes no order for wasted costs against the Tenant's solicitors. The Tribunal is not satisfied on the balance of probabilities that the irrecoverable costs incurred by the Landlord in preparation for the hearing were a result of any improper, unreasonable or negligent act or omission on the part of the Tenant's solicitors.**

Whether an Unreasonable Costs Order should be made against the Tenant under rule 13(1)(b) of the Tribunal Procedure Rules 2013?

106. The Tribunal observes that the preponderance of the Landlord's evidence is concerned with the conduct of the Tenant's representatives. The Tenant's conduct does not feature in the evidence except in relation to communications about the Landlord's revised premium offer. In the Tribunal's view this reflects the marginal role played by the Tenant in enfranchisement proceedings which are characterised by the significant involvement of the parties' professional representatives and the technical nature of the evidence. A Tenant is not expected to give evidence and as a rule does not attend the hearing.
107. The Tribunal has found that the Tenant's solicitors did not act improperly, negligently or unreasonably in connection with the enfranchisement proceedings on behalf of the Tenant. Given the Tribunal's finding, the Landlord's case against the Tenant for unreasonable costs rested solely on her response to the revised premium offer.
108. Mr Leoni argued that the Tenant's failure to provide instructions was an acute failing and not the conduct expected of any reasonable party to litigation, especially a party who instigated the litigation. Further the Tenant knowing well in advance of the date of the hearing would have sought ways to engage with her solicitors and provide instructions.
109. The Tenant's explanation for not responding to her representatives' communications about the Landlord's offer was that she did not receive them because of her fault with her landline which occurred in late December 2024. The Tenant had only recently received promises that the repairs would be carried out in few days. The Tenant did not possess a mobile phone. The Tribunal considers the Tenant's explanation of a fault with her landline plausible. It is not uncommon in the Tribunal's experience for faults to occur with landlines.
110. The Landlord did not consider that the Tenant's explanation was reasonable because she knew that the hearing was imminent and that she should have put in alternative steps for communicating with her representatives. In the Tribunal's view, the Landlord's submission presupposes that the Tenant would be taking an active part in the preparation for the hearing. As previously noted the Tenant performs a marginal role in enfranchisement proceedings. In this case the Tenant was not required to provide a witness statement, and in all probability the Tenant was not expected to attend the hearing. The Tenant had instigated the Claim for a new Lease in October 2023, and had appointed her solicitors as her nominated representative. The Tenant had given instructions to her

solicitors to progress the Claim through the Tribunal. The Claim had been ongoing for over 12 months, and in the Tribunal's view the Tenant would not have anticipated given the passage of time that the Landlord's stance on the value of the premium would have radically altered just before the hearing.

111. The Tribunal adds that the Tenant's delay in responding to the Landlord's offer of a revised premium was not the subject of a Tribunal direction and did not prevent her solicitor from getting the case ready for hearing on 14 January 2025.
112. Finally when the Tenant became aware of the Landlord's offer of a revised premium, she agreed to the terms of the new lease including the premium which enabled the proceedings to be withdrawn.
113. The Tribunal concludes that the Tenant's explanation for the delay in responding to her representatives' communications on the Landlord's offer of a revised premium when viewed objectively was reasonable. The Tenant did not receive the communications because of a fault with her landline which was beyond her control. It appeared that the Tenant was expecting the repair to be done promptly which did not happen. The Tenant had not been required to give a witness statement or evidence at the hearing. In the Tribunal's view the Tenant would not have anticipated having regard to the passage of time from the date of the Claim to have given further instructions to her solicitors about the conduct of the hearing.
114. **The Tribunal makes no order for unreasonable costs against the Tenant. The Tribunal is not satisfied on the balance of probabilities that the Tenant had acted unreasonably in conducting the proceedings.**

Costs Schedule and other matters.

115. In view of the Tribunal's decision that the threshold criteria for making a costs order have not been met, the Tribunal has no grounds to make an order for costs against the Tenant and her solicitors.
116. The Tribunal at the hearing considered the Landlord's schedule of costs if in the event it had decided that the threshold criteria had been met. The Tribunal observes that if it had been required to consider the quantum of costs it would have questioned the appropriateness of appointing senior counsel for a straightforward case involving a dispute on a single valuation issue, the costs of the expert's report which was required by virtue of the Tribunal's directions and the extensive reliance upon the services of a Grade A solicitor for the preparation of the costs applications. The Tribunal acknowledges that it is the party's prerogative to appoint

whoever the party sees fit to conduct proceedings on its behalf, however, wider considerations come into play when an order for costs is being considered against the other party.

117. The Tribunal observes that about 40 per cent of the costs claimed in the schedule related to the Landlord's costs incurred on the costs applications. The Upper Tribunal in *Willow Court Management* [2016] UKUT 290 (LC) at para 43 indicated that costs applications should be dealt with summarily and not allowed to become major disputes in their own right. Sir Thomas Bingham MR in *Ridehalgh v Horsefield* [1994] Ch205 at page 208 expressed the view that applications for wasted cost should be characterised by simplicity and summariness and elaborate pleadings should be avoided and it should not become a new and costly form of litigation.
118. The Landlord's failure to submit its application for costs on time was unfortunate and set off a chain of events which eventually resulted in a hearing. The Tribunal felt constrained to consider the Landlord's case in granular detail particularly in view of Mr Zhang's submission that the Landlord's case did not come up to proof.
119. The Tribunal notes that the Upper Tribunal *Willow Court Management* [2016] UKUT 290 (LC) at para 43 recommended a procedure whereby

"The applicant for an order should be required to identify clearly and specifically the conduct relied on as unreasonable, and if the tribunal considers that there is a case to answer (but not otherwise) the respondent should be given the opportunity to respond to the criticisms made and to offer any explanation or mitigation. A decision to dismiss such an application can be explained briefly. A decision to award costs need not be lengthy and the underlying dispute can be taken as read".

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.