FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference **HMCTS Code**	**:**	**CAM/00MG/LRM/2025/0003** **V:CVP REMOTE**
Property	**:**	**Vizion, Avebury Boulevard, Milton Keynes, Buckinghamshire MK9 2FN**
Applicant	**:**	**Vizion RTM Company Limited**
Representative	**:**	**Ann Savell**
Respondent	**:**	**Avon Ground Rents Limited**
Representative	**:**	**Scott Cohen Solicitors Limited**
Type of application	**:**	**Application in relation to the denial of the Right to Manage: Rule 13 Costs**
Tribunal member(s)	**:**	**Regional Judge Wayte** **Regional Surveyor Hardman**
Date	**:**	**28 April 2026**

DECISION

The tribunal will not make an order for costs against the applicant pursuant to Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

<u>Background</u>

1. This application for costs, made by Scott Cohen on behalf of the respondent, followed the tribunal's decision dated 15 December 2025 to dismiss the application that the applicant was entitled to acquire the

Right to Manage ("RTM") the premises known as Vizion, Avebury Boulevard, Milton Keynes. That decision was made on the basis that the property was excluded from the Right to Manage as at the date of service of the claim notice due to the non-residential parts exceeding 25% of the internal floor area (the limit in force at the time).

2. The original application to determine the RTM was made on 3 February 2025 and directions were issued on 31 July 2025. In view of the respondent's objections in their counter-notice as to the property, they provided for a two day hearing, with an inspection to take place on the first morning. That hearing was subsequently listed for 1-2 December 2025. Permission was also given for each party to rely on an expert in respect of the property and its qualification for the RTM, having regard to Schedule 6 and section 72 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").

3. The respondent's expert subsequently accepted that the property did comply with section 72(1) of the 2002 Act and that objection was therefore withdrawn in the respondent's Statement of Case dated 18 September 2025.

4. The objection in respect of Schedule 6, buildings with substantial non-residential parts, was complicated by the increase in the limit from 25% to 50% introduced on 3 March 2025 by section 49 of the Leasehold and Freehold Reform Act 2024 ("the 2024 Act"). The respondent initially reserved their position on the effect of that change but on 29 October 2025 made an application for that objection to be dealt with as a preliminary issue on the papers. On the assumption that the percentage of commercial use had by then been agreed at 42.75%, I decided to cancel the inspection and reduce the hearing to one day by video conference so that all remaining objections could be considered together.

5. As stated above and in more detail in the RTM decision, the tribunal decided that as the relevant date was defined in the 2002 Act as the date of service of the claim notice, which was before 3 March 2025, the original limit of 25% applied. Given that it appeared likely the applicant would reapply for the RTM in due course, the tribunal decided to give its view on the other arguments raised by the respondent. Of the three other grounds, the tribunal indicated that only one would have been fatal, due to issues with the applicant's evidence produced at the hearing.

6. The application for costs under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules") was made on 13 January 2026. Costs of £28,005.00 including VAT were sought, split between £14,000 for Simon Allisson KC who was instructed for the hearing and the balance for Scott Cohen. The application stated that the applicant's conduct during the course of proceedings demonstrated conduct for which a Rule 13 order should be

made and arising from which the respondent's costs of proceedings were unnecessarily increased.

The Law

7. Under Rule 13(1) of the 2013 Rules, the tribunal may make an order for costs only under section 29(4) of the Tribunal Courts and Enforcement Act 2007 (wasted costs) or if a person has acted unreasonably in bringing, defending or conducting proceedings (unreasonable costs).

8. The leading Upper Tribunal decision on Rule 13(1) unreasonable costs is *Willow Court Management Company 1985 Ltd v Alexander* [2016] UKUT 0290. There are three steps: the tribunal must first decide if the applicants acted unreasonably; if so, whether an award of costs should be made and, finally, what amount.

9. In deciding whether a party's behaviour is unreasonable the Upper Tribunal in *Willow Court* cites with approval the judgment of Sir Thomas Bingham MR in *Ridehalgh v Horsefield* [1994] Ch 2005. It does so at paragraph 24 of its decision in these terms:

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

10. The Court of Appeal has recently considered the test for unreasonable conduct justifying a Rule 13 order in *Kathryn Lea (and others) v GP Ilfracombe Management Company Ltd* [2024] EWCA Civ 1241. That decision makes it clear that a finding of unreasonable conduct does not require vexatious conduct or harassment. The relevant question is the "acid test" in the light of the facts of each case.

Unreasonable behaviour: the respondent's case

11. The respondent provided further submissions in accordance with the tribunal's directions in respect of this application. In summary, it claimed the applicant had acted unreasonably and vexatiously in the conduct of the proceedings by pursuing the matter to a hearing where the evidence showed the case was more than likely to fail. In doing so, they had ignored indications provided by the tribunal to that effect and also been "*unco-operative and necessarily(*sic*) litigious*".

12. Particular complaint was made about the dispute concerning the date of service of the claim notice, posted by registered post on 20 December 2024 and collected by the respondent's agent on 24 December 2024.

The way the challenge was phrased appeared to indicate a factual dispute as to service, necessitating a hearing.

13. The respondent had provided the applicant with an Upper Tribunal authority as to the correct date for service and sought agreement to a paper determination to reduce costs. In respect of the issue of the extent of commercial premises, the tribunal had given the applicant a clear indication that they should seek advice in a letter dated 30 October 2025. They proceeded to the hearing regardless and lost on that very point.

14. Further complaint was made as to the difficulties with agreement as to the bundle and failure to achieve agreement on pagination until the tribunal intervened.

15. The applicant had made a number of applications in these proceedings without merit, including to strike out the counter notice and the surveyor's report.

16. The respondent alleged there was a wider context to the conduct of the applicant, namely a personal dispute between the applicant's representative, Anne Savell and the respondent's agent. That had led to a campaign to canvass leaseholders to join the RTM and a number of other applications under the tribunal's different jurisdictions.

17. The respondent therefore contended that taken in its entirety the conduct showed "*a vexatious approach to the notification of costs to be incurred by the landlord*".

<u>The applicant's case</u>

18. The applicant's response to the costs claim was drafted by David Jarvis, who had assisted them with the process. Ann Savell, the representative at the hearing, had also sought to rely on a skeleton argument produced by the respondent's counsel in relation to a different matter but this was submitted late, without consent and the tribunal did not consider it was of assistance.

19. Mr Jarvis argued that the threshold for an order under rule 13(1)(b) was high, as confirmed by *Willow Court*. The claim for the RTM had been brought in good faith, pursuing statutory rights available to qualifying leaseholders. The respondent's application appears to reflect dissatisfaction with being required to defend the claim, as opposed to providing evidence of unreasonable conduct.

20. In terms of the percentage of non-residential use, the applicant had initially relied on service charge information supplied by the respondent. When the respondent's surveyor challenged those calculations, independent measurements were taken and adjustments made to reflect the evolving evidence. The applicant pointed out that the respondent had also changed their position as the proceedings progressed, for example in relation to the initial allegation that the

building was not structurally detached and the incorrect position taken by their expert that the residential car parking spaces were not demised in the leases.

21. As to the date of service of the claim notice, Mr Jarvis argued it was reasonably open to the RTM Company to test the legal consequences of the various procedural rules and statute. The tribunal's suggestion that the applicant seek legal advice did not amount to a determination that the claim was hopeless.

22. The RTM Company is a volunteer body without professional legal representation. Arguable but unsuccessful applications do not meet the rule 13 threshold. The respondent has not demonstrated vexatious, abusive or improper conduct. The applicant complied with the directions and any procedural or administrative matters, for example the issue with the bundles, were minor.

The tribunal's decision and reasons

23. We agree with the applicant that the respondent has not established unreasonable conduct on the part of the applicant, sufficient to justify an order for costs against them. The applicant was acting without professional legal representation and therefore the standard to be applied is that of a reasonable litigant in person in the circumstances of the case. The fact that there was mistrust on both sides is relevant to that assessment, as is the fact that the respondent chose to make allegations in its counter notice that it later withdrew (whether the building was structurally detached) and incorrect statements by its expert that the residents' car parking spaces were not demised to them.

24. As stated above, the situation was further complicated by the changes introduced by the 2024 Act. The point about the relevant date for considering the correct percentage to be applied in respect of non-residential use was only raised by the respondent at a relatively late stage. It was the tribunal's decision to have a hearing to consider all the objections rather than deal with a preliminary issue on the papers. While the applicant chose to proceed to that hearing, that again cannot be classed as unreasonable behaviour in a rule 13 sense. Although the tribunal had indicated that the respondent's argument "had some force"; given the applicant's distrust of the respondent, it was not unreasonable for them to decide that they wished to argue their case at a final hearing.

25. The applicant's arguments as to the correct date for service of the claim notice were weak but the respondent is not correct to identify that issue as the sole reason for proceeding to a hearing. The arguments as to the bundle and weak procedural applications are trivial issues, reflective of the inexperience of those representing the applicant. Had the respondent raised the question of the relevant date at the outset, the tribunal may well have taken the point as a preliminary issue on the papers, although that would have required clarity as to the correct

percentage of non-residential use, which appeared to remain unclear even by the time of the final hearing.

26. In the circumstances, there is no need to consider the other two steps and the tribunal does not make the order sought.

27. The applicant's response included an application for an order requiring information under section 82 of the 2002 Act. That is not within the jurisdiction of the tribunal but requires an application to the County Court as set out in section 107. The applicant may be aware that, unlike the tribunal, the County Court is a costs-shifting jurisdiction and the tribunal repeats that if it wishes to pursue any further applications for the RTM it would be well-advised to seek professional, expert advice before so doing.

Name: Judge Wayte

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 be made to the Upper Tribunal (Lands Chamber).