

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/00LC/HNA/2025/0630
Property	**:**	GFF, 100 Capstone Road, Chatham, ME5 7PG
Applicant	**:**	Hall's Residency Ltd
Representative	**:**	
Respondent	**:**	Medway Council
Representative	**:**	
Type of Application	**:**	**Rule 13 Costs Application** **Appeal against a financial penalty** - Section 249A & Schedule 13A to the Housing Act 2004
Tribunal Member	**:**	Tribunal Judge Loveday
Date of hearing/venue	**:**	Decision on the papers without a hearing (Rule 31)
Date of Decision	**:**	30 October 2026

DETERMINATION

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Introduction

1. This is an application for costs under r.13(1) Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules"). The application follows the striking out of an appeal against a Civil Financial Penalty imposed by the Respondent. Unusually, the costs are sought by the Applicant, whose appeal has been struck out. He seeks costs against the Respondent local housing authority in the sum of £3,741.

2. The facts do not appear to be disputed. The Applicant owns a ground floor flat at 100 Capstone Road, Chatham, ME5 7PG. The flat is (or was) tenanted. On 28 January 2025, the Respondent local housing authority served an Improvement Notice. On 17 October 2025, the Respondent issued a Final Notice confirming its intention to impose a financial penalty of £8,000.

3. On 14 November 2025, the Applicant appealed the financial penalty to this Tribunal under s.249A Housing Act 2004. The Tribunal gave directions on 8 April 2026 and a hearing was listed for 11 June 2026. On 29 May 2026, the Respondent indicated it was not contesting the appeal. On 3 June 2026, the Applicant further applied for costs under r.13(1)(b) of the Rules. On 5 June 2026, the Regional Judge struck out the appeal for non-compliance with the directions. He also refused the r.13(1) costs application. On 17 June 2025, the application was reinstated, solely for the purposes of arguing the r.13(1) costs issue. For those limited purposes, directions were given on 17 July 2026 and 10 September 2026, which provided that the costs application should be determined on the papers without a hearing.

The Applicant's arguments

4. The Respondent has not made any costs submissions.

5. The Applicant argues the Respondent's conduct was unreasonable for the following reasons:
   (1) The risk scoring adopted by the Respondent was wrong.

(2) The Applicant had no opportunity to make representations in reply to the Respondent's Notice of Intent. The notice further assessed the mitigating factors as "none", before any representations had been received.

(3) The Respondent's officers attended the Property on 17 June 2025 and observed that substantial remedial works were in progress.

(4) The Respondent failed to take into account or address the representations made concerning the issue of 'wilful blindness'.

(5) The Respondent had unfairly imputed constructive knowledge or negligence on the part of the Applicant.

The Applicant summarises its costs as:

- Legal representation and advice: £2,050.00.
- Review of evidence and documentation (2 hours): £40.00.
- Preparation of representations and appeal documents (48 hours): £960.00.
- Correspondence with the Respondent and third parties (4 hours): £80.00.
- Tribunal application fee: £114.00.
- Tribunal hearing fee: £227.00.

It appears the legal work was carried out by Mr Ben Hall, a director of the Applicant.

Principles

6. Under r.13(1)(b) of the 2013 Tribunal Procedure Rules, a tribunal may make an order in respect of costs "if a person has acted unreasonably in bringing, defending or conducting proceedings". In *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT 0290 (LC) at para [28], the Upper Tribunal suggested three convenient stages for the award of costs under Rule 13(1)(b):

- Stage 1: Whether the party has acted unreasonably. 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 good practical rule is for the Tribunal to ask: would a reasonable person

acting reasonably have acted in this way? In other words, is there a reasonable explanation for the conduct in issue?: *Lea v GP Infracombe Management Co Ltd* [2024] EWCA (Civ)1241; [2025] 1 W.L.R. 371 at [16].

- Stage 2: Whether the First-tier Tribunal ought (in its discretion) to make an order for costs or not. Relevant considerations include the nature, seriousness, and effect of the unreasonable conduct.
- Stage 3: Discretion as to quantum. Again, relevant considerations include the nature, seriousness, and effect of the conduct.

The Tribunal's decision

7. In the case of respondents, the r.13(1)(b) costs provision is engaged where they have "acted unreasonably in … defending … proceedings". This wording focusses on conduct once proceedings are underway, or at the very least contemplated. The proposition that the "unreasonable behaviour must … relate to behaviour within the proceedings" appears to have been accepted in at least one previous costs decision of the Property Chamber: see *30 Sterry Gardens, London RM10 8PH, LON/00AB/HNA/2023/0026*, at 21. In those circumstances, pre-action conduct is not relevant as a free-standing wrong. It may only be relevant to the limited extent that it informs the Tribunal whether a respondent acted unreasonably in defending the case.

8. The point is reinforced by para 10 of Sch.13A Housing Act 2004. An appeal to the Tribunal involves a re-hearing of the housing authority's decision to impose the financial penalty. The Respondent in this case did not have power to award costs to landlords who made representations, or incurred costs opposing the proposed penalty. Instead, the statutory remedy for errors in methodology or procedure on the part of the local housing authority was to appeal to the Tribunal. It does not therefore appear that a Tribunal is intended to have power to award costs in respect of events before an appeal is made.

9. Turning to the five main complaints in this application, these all relate to events before 14 November 2025, when the appeal was issued. For the reasons given above, the Tribunal does not consider the alleged behaviour falls within r.13(1)(b) of the Rules.

10. It is not specifically argued that the Respondent in this case ought to have conceded the appeal at an earlier stage than it actually did. And the concession does not appear to be the reason the application was struck out. But in any event, the Tribunal in *Willow Court* commented on concessions at [143]:

> "*143 The observation of Mummery LJ, which we have quoted in paragraph 36 above are particularly apt in this case. It is legally erroneous to take the view that it is unreasonable conduct for claimants in the Property Chamber to withdraw claims or that, if they do, they should be made liable to pay the costs of the proceedings. Claimants ought not to be deterred from dropping claims by the prospect of an order for costs on withdrawal, when such an order might well not be made against them if they fight on to a full hearing and fail.*"

Although these observations were expressly directed at Claimants, the Tribunal sees no reason why they should not equally apply to respondents to appeals. They comments strongly suggest that late concessions by Respondents ought not to be punished by way of a r.13(10(b) costs orders.

11 In the light of this conclusion, it is unnecessary to consider stages 2 and 3 of *Willow Court*.

Reimbursement of fees

12 The costs application on 3 June 2026 was expressed to be made under r.13(1)(b) alone. But the Tribunal cannot overlook the fact that the body of the application seeks reimbursement of an application fee of £114 and a hearing fee of £227 (namely, £341). Reimbursement of fees is governed by r.13(2) of the Rules, and not r.13(1)(b).

13 The Tribunal's separate discretion under r.13(2) is unrestricted, other than by the overriding objective: *Willow Court* at [13].

14 The Respondent is and was under an obligation to further the overriding objective and co-operate with the Tribunal. A concession of an appeal made only days before a hearing, cannot be characterised as furthering the overriding objective, particularly where the other party is unrepresented and has incurred substantial costs in raising the appeal. And the overall outcome of the dispute (albeit involving a striking out of the appeal) is a 'win' for the Applicant. It is proportionate to order a reimbursement of fees, in view of the means of the parties and the outcome.

15 The Tribunal therefore concludes that it is fair and just to order the Respondent to reimburse the Applicant its fees of £341 under r.13(2) of the Rules.

Conclusions

16 No order for costs is made under r.13(1)(b) of the Rules.

17 The Respondent must reimburse the Applicant application and hearing fees of £341 under r.13(2) of the Rules.

RIGHTS OF APPEAL

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.

3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.