11908

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

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| **Case Reference** | : | **LON/00AU/LSC/2014/0370** |
| **Property** | : | **46 Thornhill Houses, Thornhill Road, London N1 1PA** |
| **Applicant** | : | **Mr P Cain** |
| **Respondent** | : | **The Mayor and Burgesses of the London Borough of Islington** |
| **Type of Application** | : | **Supplemental cost applications following an application for the determination of the liability to pay service charges** |
| **Tribunal Members** | : | **Judge P Korn**<br>**Mr C Gowman MCIEH MCMI**<br>**Mrs L Hart** |
| **Date of Main Decision** | : | **14th April 2016** |
| **Date of Supplemental Decision** | : | **8th June 2016** |

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**SUPPLEMENTAL DECISION ON COSTS**

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## Decisions of the Tribunal

(1) Pursuant to rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal orders the Applicant to pay £1,162.00 towards the Respondent's legal costs within 28 days after the date of this decision.

(2) The Tribunal makes no cost orders in favour of the Applicant.

## The background

1. This application is supplemental to an application (the "**Main Application**") by the Applicant for the determination of liability to pay a service charge under the Landlord and Tenant Act 1985 (as amended).

2. A hearing took place in relation to the Main Application and a decision (the "**Main Decision**") in respect of the Main Application was issued on 14th April 2016.

3. The Respondent has made an application for the recovery of its legal costs pursuant to rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**Rule 13(1)(b)**").

4. The Applicant has made an application for the recovery of the application and hearing fees and for the reimbursement of his copying charges.

## Respondent's written submissions

5. In written submissions the Respondent summarises its analysis of the background to the Main Application. It notes the decision limiting the Main Application to the years from 2007/08, which was upheld by the Upper Tribunal, and it also notes the other litigation that has taken place between the parties, as well as certain Freedom of Information requests which it states were found by a tribunal in the General Regulatory Chamber to be properly characterised by the Council and Information Commissioner as vexatious. The Applicant has made over 70 Freedom of Information requests and has entered into a vast amount of correspondence with the Tribunal and the Respondent.

6. The Respondent submits that it is entitled to claim its legal costs from the Applicant under Rule 13(1)(b). In support of this, in addition to the above points it has given a number of examples of what it characterises as unreasonable conduct on the part of the Applicant.

7. First, it notes that in relation to the Main Application the Applicant only achieved a reduction of £305.92 out of total disputed service charges of £6,322.22. The Applicant himself had requested a 2/3 day hearing and in the Respondent's submission even a 2 day hearing was not a proportionate use of the Tribunal's or the Respondent's time.

8. Secondly, the Applicant had admitted that he had not complied with the Tribunal's directions, and he included new material in his bundle contrary to the Tribunal's directions, which was excluded. He also sent unsolicited further submissions to the Tribunal after the hearing.

9. Thirdly, the Applicant had made allegations impugning the integrity and capability of named Council staff, including its legal representative. This had, in the Respondent's submission, directly resulted in the Respondent deciding to instruct Counsel for the hearing, thereby considerably increasing the Respondent's legal costs. As regards the amount of Counsel's costs, his normal fee for a conference and a 2 day hearing would have been £11,000 + VAT but the Respondent's cost application capped these at £8,000 + VAT.

10. Fourthly, despite the enormous bundles of documents submitted by the Applicant, which the Respondent had to review, the Tribunal found that the Applicant had provided no tangible or credible evidence in support of his challenges on a large number of issues.

11. Fifthly, on 10th February 2016 the Applicant applied to join two further applicants despite the application having been issued in July 2014, and this application (to join further applicants) was refused following detailed submissions by the Respondent.

12. Sixthly, the Applicant wrote to the local press in relation to these proceedings during the conduct of the proceedings and prior to any decision being made by the Tribunal.

13. The Respondent further states that the Applicant's volume of complaints and requests for information is unprecedented (presumably meaning unprecedented in the Respondent's own experience), and the Respondent submits that a reasonable inference to be drawn is that the Applicant will never be satisfied with any information or decision which does not accord with his own view. Such conduct, it submits, seriously impedes the Respondent's ability to deliver leaseholder services and places a strain on finite resources.

**Applicant's written submissions**

14. The Applicant seeks a refund of the application and hearing fees, presumably pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. He also seeks

reimbursement of the cost of producing some 4,200 colour pages at 20 pence per page, presumably pursuant to Rule 13(1)(b).

15. In his written submissions the Applicant argues that the reason why there was no evidence to support certain points made by him was that the Tribunal had permitted that evidence to be suppressed or ignored. He also argues that it was not proportionate for the Respondent to be represented by Counsel and by an in-house solicitor supported by four other Council officers.

16. The Applicant states that the Respondent could have requested a postponement. He also questions why he was not entitled to add new evidence, adding that this begged the question as to what evidence he was permitted to include. In addition, he challenges the Respondent's statement that it had not had an opportunity to look at his further submissions and states that the only reason his bundle arrived when it did was that the Respondent did not have its own bundle ready.

17. The Applicant also makes specific points regarding certification, sections 47 and 48 of the Landlord and Tenant Act 1987, double-charging, ASB services, the Respondent's description of the roof, the appropriate method for dealing with the creeper, the removal of bulky items, the attic leak, the cleaner (or ex-cleaner) and cleaning quality, the alleged disparity between bedroom weighting and area across Thornhill and the borough, electricity charges, the definition of building and the Tribunal's refusal to allow other parties to be joined to the application.

## The Tribunal's analysis

Respondent's Rule 13(1)(b) application

18. The Respondent's application under Rule 13(1)(b) is for an order that the Applicant pay the Respondent's legal costs. The relevant part of Rule 13(1)(b) states that *"the Tribunal may make an order in respect of costs only - ... (b) if a person has acted unreasonably in bringing ... or conducting proceedings in ... (ii) a residential property case, or (iii) a leasehold case ..."*.

19. In the case of *Ridehalgh v Horsfield (1994) 3 All ER 848* Sir Thomas Bingham MR described the acid test of unreasonable conduct in the context of a cost application as being whether the conduct admits of a reasonable explanation. This formulation was adopted by the Upper Tribunal (Lands Chamber) in the case of *Halliard Property Company Ltd v Belmont Hall and Elm Court RTM Company Ltd LRX 130 2007.* Costs are therefore not to be routinely awarded pursuant to a provision such as Rule 13(1)(b) merely because there is some evidence of imperfect conduct at some stage of the proceedings.

20. The Respondent submits that the Applicant's conduct at various stages of these proceedings amounted to unreasonable conduct.

21. We do not consider, and the Respondent has not sought to argue, that the making of the application itself was unreasonable. The Applicant has achieved some minor concessions and the evidence suggests that he genuinely believed that the service charges were unreasonably high in a number of respects. He was entitled, therefore, to make the application and to pursue it, albeit that it was incumbent on him to do so in a reasonable manner. Therefore, the Applicant has not acted unreasonably in bringing proceedings, and the next issue to be determined is whether he has acted unreasonably in conducting proceedings.

22. In our view the Applicant has acted unreasonably in conducting proceedings within the meaning of Rule 13(1)(b) and we consider that at times his conduct has not (to use Sir Thomas Bingham's phrase) admitted of a reasonable explanation. His flagrant disregard of the Tribunal's directions and his general overall conduct have been such as to cause an experienced Procedural Judge to come very close to barring him from taking further part in the proceedings relating to the Main Application on the ground that his behaviour was an abuse of process or vexatious. His approach to this case has in our view been wholly disproportionate. This includes the amount of correspondence, the length of his submissions, the nature of the language used by him when criticising Council officers and members of the judiciary with whom he disagrees, and his attitude towards compliance with directions.

23. In addition, his conduct needs to be seen against a backdrop of other action taken by him, including the very large number of Freedom of Information requests which were described as vexatious by a tribunal in the Information Regulatory Chamber. It also needs to be seen in the context of the Respondent's finite resources with which to service other leaseholders and the Tribunal's own resources. Paragraph 3(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**the Rules**") states that *"the overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly"*, and paragraph 3(2)(a) of the Rules goes on to state that *"dealing with a case fairly and justly includes – (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal"*.

24. The Applicant has raised a number of points in support of his own cost applications but which presumably he would like also to be treated as pertinent to the Respondent's Rule 13(1)(b) cost application. He makes the reasonable point that the Respondent was represented by Counsel supported by an in-house solicitor and four other officers and argues that this was itself disproportionate. We note that the costs claimed are

just for Counsel and the Respondent's in-house solicitor and therefore the involvement of the other personnel is not directly relevant to the cost issue. It is normal, albeit not universal, practice when instructing a barrister to do so through a solicitor. Was it reasonable, though, to employ a barrister and to employ one of the seniority of Mr Bhose? In our view, due to the difficult nature of the case, which will have become increasingly apparent as it unfolded, it was reasonable for the Respondent to conclude that it needed that level of representation. However, in our view it does not follow that the need for experienced Counsel arose directly out of the Applicant's unreasonable conduct. Some cases involve more complex issues than others, some applicants are harder to deal with than others and some cases are difficult for other reasons. The test for unreasonable conduct under Rule 13(1)(b) and similar cost rules is high, and we are unable to accept that the evidence shows that it was necessarily the level of unreasonable conduct – as distinct from other factors – which led directly to the decision to instruct senior Counsel.

25. As regards the Applicant's complaints about some of his evidence having been declared inadmissible, the decision to declare it inadmissible arose entirely out of his own serious failures to comply with directions in the context of his unreasonable approach to the whole case. He seeks to argue that the Respondent could have read his late submissions, but these further submissions were served after serious previous failures by him to comply with directions and after he had already been told in writing that his earlier submissions would be treated as his case (i.e. with no additional material). A postponement was not an appropriate solution in our view; this would not have been fair on the Respondent, it could well have wasted further resources and it would have rewarded the Applicant for his serious failures to comply with directions about which he had already been clearly warned.

26. We note the points made by the Applicant about various specific issues. We have already made our decision on those issues on the basis of the admissible evidence available to us and it would not be appropriate to revisit these issues in the context of this supplemental application. The reasons for the Tribunal refusing to allow two other people to be joined as co-applicants is a matter of record.

27. In our view, in the light of the unreasonable manner in which the Applicant has conducted these proceedings, it is appropriate in principle for us to award costs against the Applicant in favour of the Respondent. However, such costs can only be awarded to the extent that the unreasonable conduct has caused those costs to be incurred. It is not the case that as long as there is evidence of unreasonable conduct the Respondent can recover all of its costs.

28. The difficulty for the Respondent here is that it is not clear from its costs schedule how much of its costs can properly be attributed to the

Applicant's unreasonable conduct. Furthermore, if Mr Bhose of Counsel had not been instructed then someone else would still have needed to run the case and therefore the Respondent would still have incurred some costs. In addition, the Respondent has failed to explain the basis on which this Tribunal can order the reimbursement of costs relating to a hearing in the Upper Tribunal. Further, there is no reason to conclude that some of the Applicant's conduct – such as writing to the press and making unsolicited further submissions – actually caused the Respondent to incur further costs. Finally, we do not accept the Respondent's argument that the hearing only turned into a 2 day hearing as a result of the Applicant's unreasonable conduct. There were many separate issues, these issues deserved to be properly aired and the Applicant was entitled to a certain amount of leeway as to the manner in which he conducted the hearing given that he was not legally represented.

29. As to the manner in which costs should be assessed, in view of the relatively small sums involved it seems to us to be disproportionate to go through a detailed assessment rather than a summary assessment.

30. In relation to Ms Karmel's costs, we accept that the time spent on the preliminary issue to exclude new submitted material (£550.00) arose out of the Applicant's unreasonable conduct, but it is not apparent from the Respondent's submissions which of her other costs arose out of such conduct. We accept that £229.00 per hour is a reasonable hourly rate for a Grade A solicitor.

31. In relation to Mr Bhose's fee, again we accept that the time spent on the preliminary issue (£510.00 + VAT) arose out of the Applicant's unreasonable conduct, but again it is not apparent from the Respondent's submissions which other elements of his fee arose out of such conduct.

32. Therefore, the cost award is limited to the items which are identifiable as arising out of the Applicant's unreasonable conduct. Accordingly, the amount payable by the Applicant to the Respondent pursuant to Rule 13(1)(b) is £550.00 + £510.00 + VAT on the £510.00 (£102.00), which equals £1,162.00 in aggregate.

Applicant's cost applications

33. In relation to the substantive service charge application the Applicant has lost his case on all but two small issues, one of which had already been conceded by the Respondent. In addition, as noted above, the Applicant has in our view conducted these proceedings in an unreasonable manner such as to justify the making of a costs award against him pursuant to Rule 13(1)(b). In the circumstances we do not consider that it would be appropriate to make a cost award in favour of the Applicant, and accordingly his cost applications are dismissed.

Miscellaneous point

34. For the record, in his written submissions the Applicant attributes to Judge Korn certain remarks which were not in fact made by him.

**Name:** Judge P. Korn **Date:** 8th June 2016

## RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

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

D. 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.