



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

Case Reference: CHI/24UP/PHN/2021/0001

Premises: Ideal Park Homes, Bishopstoke Lane,
Brambridge, Hampshire SO50 6HY

Applicants: Various pitch holders

Representative: Mr Nigel Evans

Respondent: The General Estates Co Ltd

Representative: None

Type of Application: Costs Application

Tribunal Member: Judge A Cresswell

Hearing: On the Papers

Date of Decision: 31 December 2021

DECISION

Costs

The Background

1. The Applicants have made an application for their costs in the proceedings and for reimbursement of fees paid by them for their application under Regulation 10 of the Mobile Homes (Site Rules) (England) Regulations 2014. This Decision must be read in the light of and as following the Tribunal's earlier Decision of 23 November 2021 ("the substantive Decision"). The Tribunal has retained the same names for the parties in this Decision, i.e. the Respondent being The General Estates Co Ltd and the Applicants being Various pitch holders.

Summary Decision

2. The Tribunal orders the Respondent to pay costs to Nigel Evans on behalf of the Applicants in the sum of £120.28
3. The Respondent is ordered to pay the sum of £100 to Nigel Evans on behalf of the Applicants in reimbursement of fees.

The Law

4. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 reads, so far as is relevant, as follows:
 - (1) The Tribunal may make an order in respect of costs only
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
 - (ii) a residential property case; or
 - (iii) a leasehold case;
 - (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
 - (3) The Tribunal may make an order under this rule on an application or on its own initiative.
 - (4) A person making an application for an order for costs—
 - (a) must, unless the application is made orally at a hearing, send or

deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

(a) summary assessment by the Tribunal;

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);

(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) shall apply, with necessary

modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

The Application and Response

5. The application by the Applicants for costs has been considered, accordingly, on the basis of whether the Respondent had acted **unreasonably**, in accordance with Rule 13(1)(b) above, **in bringing, defending or conducting proceedings**.
6. The Applicants' application was received by the Tribunal by email on 1 December 2021.
7. The Respondent was given an opportunity to respond to the application for costs and to indicate if it wished to resist the application but did not do so.

Consideration by the Tribunal

8. The Tribunal considered the application by the Applicants for costs on the basis that the Respondent had acted unreasonably.
9. The Tribunal reminds itself that this jurisdiction is generally a "no costs" jurisdiction. By contrast with the county court, residential property tribunals are designed to be "a largely costs-free environment": **(1) Union Pension Trustees Ltd, (2) Mr Paul Bliss v Mrs Maureen Slavin [2015] UKUT 0103 (LC)**.
10. In **Willow Court Management Company (1985) Limited v Alexander** (2016) UKUT 0290 (LC), the following advice was given:
*"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."*

“At the 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” “the nature, seriousness and effect of the unreasonable conduct will be an important part of the material to be taken into account”

“The only general rules are found in section 29(2)-(3) of the 2007 Act, namely that “the relevant tribunal shall have full power to determine by whom and to what extent the costs are to be paid”, subject to the tribunal’s procedural rules. Pre-eminent amongst those rules, of course, is the overriding objective in rule 3, which is to enable the tribunal to deal with cases fairly and justly. This includes 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.” but other circumstances will clearly also be relevant...”

When considering the order to make, there is no need to show that the unreasonable conduct caused any identifiable loss on the part of the innocent party: see paras 40-41. The order need not be confined to the costs: “attributable to the unreasonable conduct”.

“...[Applications] should be determined summarily, preferably without the need for a further hearing, and after the parties have had the opportunity to make submissions. We consider that submissions are likely to be better framed in the light of the tribunal’s decision, rather than in anticipation of it, and applications made at interim stages or before the decision is available should not be encouraged. 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. The decision should identify the conduct which the tribunal has found to be unreasonable, list the factors which have been taken into account in deciding that it is appropriate to make an order, and record the factors taken into account in deciding the form of the order and the sum to be paid.”

“The behaviour of an unrepresented party with no legal knowledge should be judged by the standards of a reasonable person who does not have legal advice. The crucial question is always whether, in all the circumstances of the case, the party has acted unreasonably in the conduct of the proceedings.”

“When exercising the discretion conferred by rule 13(1)(b) the tribunal should have regard to all of the relevant facts known to it, including any mitigating circumstances, but without either “excessive indulgence” or allowing the absence of representation to become an excuse for unreasonable conduct.”

11. The Tribunal has had regard to the word “unreasonably.” The test is whether the behaviour permits of reasonable explanation: HH Judge Huskinson in **Halliard Property Company Limited and Belmont Hall and Elm Court RTM Company Limited LRX/130/2007 LRA/85/2008**. In **Ridehalgh v Horsfield** (1994) 3 All ER 848, Bingham LJ said:
“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 judgement, but it is not unreasonable”.
12. The Tribunal followed a two-stage approach. First to find whether the Respondent acted unreasonably and then, if it so found, to exercise its discretion whether to order costs having regard to all of the circumstances, including the Tribunal’s overriding objective.
13. The Applicants were entitled to ask the Tribunal to determine if the new rule was reasonable; in the event, the Tribunal determined that the new rule was not reasonable.
14. The Tribunal viewed the Respondent as not being a lawyer, but rather an unrepresented person with limited knowledge, but one who could understand that there were Tribunal proceedings and what the Tribunal required of it.

15. The Tribunal noted the Applicants' attempts to resolve the issues via communication and without the expense of a hearing.
16. The Tribunal finds that the Respondent has acted unreasonably **in conducting proceedings**.
17. The Tribunal finds that it was unreasonable for the Respondent to ignore the Tribunal proceedings and to ignore the Tribunal's Directions of 6 August 2021, which made clear to the Respondent it must comply with Directions made of him. That meant that the Applicants were required to incur costs, which could have been avoided.
18. Taking a rounded view, the Tribunal orders the Respondent to pay costs to Nigel Evans on behalf of the Applicants in the sum of £120.28, made up by 13.5 hours at the then minimum wage rate of £8.91 per hour.

Fees

19. In **Cannon v 38 Lambs Conduit LLP** (2016) UKUT371 (LC), the Upper Tribunal ordered the reimbursement of fees where *the tenants have succeeded on the principal substantive issue*.
“Reimbursement of fees does not require the applicant to prove unreasonable conduct on the part of an opponent. It is a matter for the tribunal to decide upon in the exercise of its discretion, and (as with costs orders) the tribunal may make such an order on an application being made or on its own initiative.”
20. Whilst the test to be applied under Rule 13(2) requires no analysis of whether a person has acted unreasonably, when all that is recorded above is weighed in the balance, the Tribunal finds that it would be appropriate to order the Respondent to reimburse the Applicants with the fees paid by them. There appears to the Tribunal to have been no other viable option open to the Applicants to resolve the issues save by making their application to the Tribunal. The Respondent is ordered to pay the sum of £100 to Nigel Evans on behalf of the Applicants in reimbursement of fees.

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. Where possible you should send your application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional Office to deal with it more efficiently.
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.