FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AX/LSC/2019/0092**
Property	**:**	**Flat 21 Osiers Court, Steadfast Road, Kingston Upon Thames, Surrey KT1 1PL**
Applicant	**:**	**Stephen Raymond Guest**
Representative	**:**	
Respondent	**:**	**Osiers Court Properties Limited**
Representative	**:**	**Carter Bell Solicitors**
Type of Application	**:**	**Costs – Rule 13 (1)b Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013**
Tribunal Members	**:**	**Tribunal Judge Dutton**
Date of Decision	**:**	**2nd October 2019**

DECISION

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DECISION

Under the provisions of Rules 13 (1)b of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 I find that the Respondent did act unreasonably in the conduct of the proceedings for the Tribunal insofar as its failure to comply with Tribunal directions and requirements were concerned. I therefore order that it should pay the Applicant Mr Guest the sum of £4,230.18 within 28 days. The costs of the application and the hearing have already been dealt with.

BACKGROUND

1. On 8th July 2019 the parties reached agreement on the Applicant's liability for service charges in dispute which resulted in the Applicant being credited with the sum of £1,409.59. A consent order dated 8th July 2019 (the Order) was entered into following a hearing before the Tribunal on that day.

2. At the same time as the Order was made directions were issued in respect of a claim under Rule 13 of the Tribunal Procedure Rules. It is this application that concerns me today.

3. The application is to be determined without a hearing and on the basis of the written submissions from the parties. I have been provided with a bundle containing the parties' submissions and a further reply by the Applicant as well as details of the costs and skeleton arguments of Counsel instructed at the hearing in July.

4. It is fair to say there is a history of dispute between the parties. Matters have been aired both in this Tribunal and in the County Court and a number of cost orders in truth it would seem mostly in favour of the Applicant. The latest appears to be in February of this year.

5. Mr Guest stated that he had issued the original application in these proceedings as a result of the Respondent's continued failure to agree a statement of account blocking the Applicant from voting at the Annual General Meeting of the Respondent and failing to comply with previous orders made by Tribunals under section 20C of the Landlord and Tenant Act (the Act).

6. In directions issued on 28th March 2019 in the substantive proceedings from which this cost application arises the Tribunal identified the matters to be determined as the reasonableness and pay ability of the service charges of the landlord in the year 2018 it apparently being agreed that the other years had been the subject of previous Tribunal determinations. The other issues to be determined were whether or not an order should be made under section 20C of the Act, whether an order should be made under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 and whether there should be a reimbursement of the application and hearing fees.

7. Continuing in the directions it is recorded as follows at (7) Mr Pinigree (solicitors for the Respondent) stated that two service charge payments have been demanded from Mr Guest in respect of the year 2018 in the sum of £1,411.29 and £1,401.05. Mr Guest told the Tribunal at the directions hearing that the landlord

had failed to provide him with a figure representing the total balance said to be outstanding on his service charge account and Mr Pinigree was unable to obtain this figure from his client during the hearing.

8. The directions record that the Respondent was by 11th April to provide copies of all relevant service charge accounts and an up to date statement of account showing the total sum which the landlord claims to be outstanding from Mr Guest. There were then the usual directions for the exchange of statements of case.

9. The application by Mr Guest in respect of the Rule 13 matter sets out his reasoning behind commencing proceedings in 2019 and gives comment on earlier decisions of the Tribunal. It is said that the Respondents failed to adhere to the directions made in March of 2019 in particular failing to provide a statement of account and statement of case. It is said that the failure by the Respondents to provide this information, which eventually resulted in it being agreed that Mr Guest had a credit of £1,409.59, means that they unreasonably defended the proceedings the more so as they continued to make allegations until the order that there was a liability for Mr Guest in the sum of £4,000. Reference is made to cases of Fons HF v Corporal Limited, Pillar Securitisation and to the Willow Court v Alexander case which I will return to in due course. The statement then addresses the steps set out in the Willow Court case and I have noted all that has been said. In the conclusion Mr Guest says as follows: *It is submitted that in defending and/or conducting its case the Respondent's conduct lacked a reasonable explanation in that:*

   a. *On 28th March of the CMC Mr Pinigree of Carter Bill stated he was instructed by OCPL that as at 1st July 2018 I was in arrears in excess of £4,000.*
   b. *The Respondent failed to substantiate the claim.*
   c. *The Respondent failed to provide a definitive statement of the service charge account in breach of the directions order of 28th March 2019 and*
   d. *The Respondent had failed to take into account previous section* 20C orders.

   The statement then referred us to the case of Staples v Danute and also stated that in respect of this application he sought an order under section 20C of the Act. At appendix 1 I was provided with further copies of the skeleton arguments by Mr Sawtell acting for Mr Guest and from Mr Hope acting for the Respondent. Both of these skeleton arguments are common to the parties and I do not propose to go through them in any detail. At Appendix II is a schedule of the costs that Mr Guest seeks to recover. These include Counsel's fees of £4,500, the application and hearing fee which has already been dealt with in the terms of the order and then his own costs in dealing with matters charged out at £19 per hour. The total liability appears to be £5,758.06 inclusive of Counsel's fees. There are a number of copy invoices and receipts attached. I also have a copy of the terms of business with Mr Sawtell who was instructed on a direct access basis and a fee note from Mr Sawtell.

10. I was also provided with a copy of the Respondent's response to the application. At paragraph 3 of the response it says as follows: *On 8th July 2019 the parties entered into a compromise order. This was an agreement reached by way of*

compromise. Reference is made to paragraph 1 of OCPL's skeleton argument. As is set out two of the three issues is identified by Mr Guest did not fall within the FTT's jurisdiction and the third was not part of the directions order made on 28th March 2019. Mr Guest set out no positive case in relation to any of the aspects to the 2018 service charge that did form part of his application. As a starting point he submitted that Mr Guest is not entitled to costs under Rule 13 as they do not fall within the Tribunal's jurisdiction.

11. The paragraph goes on to state were it not for the settlement reached it is likely that further hearings or directions would have been required. Reference is also made to an application made by Mr Guest under Rule 18 for disclosure which I will deal with separately. The document then sets out the reasons for opposing and legal submissions. There is an acceptance that there was a delay in producing documents but this is said not to have been evidence of the Respondent acting unreasonably. The statement then goes on to address the steps to be taken in respect of the findings of the Upper Tribunal in Willow Court and how this related to the matter before me. It is said that Mr Guest's application to determine his service charges and his application for costs under Rule 13 are not within the normal background facts of a Tribunal matter. The statement goes on to say *"although OCPL was not able to comply with one of the directions it has provided reasonable explanation. On the other hand Mr Guest has not provided any reasonable explanation for his failure to comply with the directions. Were it not for reaching an agreement at the hearing on 8th July 2019 further court resources would have been needed in order to determine the dispute."*

12. There are then paragraphs dealing with the amount of costs claimed by Mr Guest and specific responses in relation thereto. One of the challenges to the fees of Mr Sawtell is that it included work in respect of a section 18 application and it is considered that costs associated therewith should not be allowed. A reasonable sum for Counsel's fees is said to be £1,500 plus VAT. The document then goes through each of the claims made by Mr Guest personally which I will not recount at this stage. I have, however, taken them into account in determining the sum that I consider should be payable by the Respondents in this matter.

13. Finally, we had a response from Mr Guest to the Respondent's reply. I have noted again all that has been said and in addition also the comments made in relation to the specific items of costs which he sought to recover.

FINDINGS

14. The relevant passages of the Willow Court case in respect of the matter are to be found at paragraphs 27 to 30 set out below. I have also attached the wording of Rule 13 and the CPR direction in respect of litigants in person all of which I have considered in reaching my decision.

15. I have borne in mind the findings in the Willow Court cases and the statements produced in respect of this application and the consent order made in July 2019. It is a sadness that these proceedings between the parties have been underway for so many years. Indeed at one stage it got to the point where an attempt to forfeit

the lease was unsuccessfully made. There appears to be no love lost between Mr Guest and Mr Kaye who is a director of the Respondent Company.

16. It is admitted by the Respondents that they did not comply with the directions as they should have done. In the skeleton argument Counsel was of the view that an effective hearing could not take place on 8th July because of the failings of Mr Guest. Notwithstanding this, the order was agreed. The first element of the directions order was for the Respondents to provide copies of relevant service charge accounts and estimates for the years in dispute and in particular an up to date statement of account showing the total sum which the landlord claims to be outstanding from Mr Guest. This was essential to progressing this matter. It is perfectly clear from Mr Guest's documents that his concern was that certain section 20C costs had been recovered through the service charges when they should not have been. There was not really a challenge made to the 2018 Accounts. Indeed in the consent order the 2018 costs are agreed at £3,170.99.

17. What the Respondents failed to do was to include appropriate credits due and taken into account the sums paid by Mr Guest on account of service charges for the year ending 2018. This was not really a dispute about the reasonableness and payability of service charges but a desire by Mr Guest, which is obviously his entitlement, to have a clear statement of account showing what sums if any he owed. In failing to produce any documentation until late in the day it seems to me that this is unreasonable on the part of the Respondent. It was this failure which caused the proceedings to get to the point that they did and I do not consider any blame attaches to Mr Guest for the fact that the Respondents seem to be considering that the case could not proceed to an effective hearing because Mr Guest has not set out what items the 2018 service charge account he was challenging. That was never really the issue and the Respondents should have known this from the previous proceedings between the parties.

18. It is noted that the final paragraph of the skeleton argument for the Respondents says as follows: "*OCPL has not yet finalised the scheduling compliant with paragraph 1 of the directions but hopes to do so by the morning of the hearing. OCPL is also prepared to make disclosure of bank statements, Carter Bell's invoices and other invoices receipts in respect of the 2018 service charge*". With respect to the Respondent, it is too late in the day to be making these concessions when the hearing was due to start. Any delay in the hearing would have been as a result of the Respondent's failure to comply with the directions.

19. I find that the Respondents have acted unreasonably in the conduct of their defence in these proceedings. Further comfort for this finding is found in Mr Kaye's witness statement dated 24th May 2019 where he seeks to hide behind jurisdictional issues and rebuts the application made by Mr Guest under Rule 18 for disclosure whilst apologising at paragraph 11 for the delay in being able to reconcile figures said to be owed taking into account the various decisions and the section 20C orders that have been made. The financial data necessary to resolve this dispute should have been within the control of the Respondent and should have been disclosed.

20. Having established that there is clear evidence of unreasonable conduct on the part of the Respondent, I then have to consider whether an order should be

made. I consider that it should be. My reasons for such finding are that if the Respondent had complied with the directions and produced details of the statements of account and invoices it would have seen that far from owing the Respondent money they owed Mr Guest money. Had this been disclosed early on in the proceeding I have little doubt that this application would not have come before us in July. All that Mr Guest had been attempting to establish was what his liability was and he had provided the Respondents with his own reconciliation statement, which appears to be dated 8th August 2018, showing credit that he considered was due to him. Accordingly for the Respondents to suggest that they were in ignorance of the basis upon which the applicant made the application and the questions to be answered is somewhat disingenuous. Accordingly I have no doubt that we have met the necessary steps to deal with items one and two of the Willow Court provisions and I therefore move on to determine what costs should be awarded.

21. To assist me on this regard I have the Applicant's statement of costs, the main fee being the sum of £4,500 payable to Mr Sawtell. The fee produced to me shows an initial conference in 2016 which would seem to have no bearing on the matter that I am required to consider.

22. On the somewhat convoluted and unclear fee note, I consider that there are the following fees which I am asked to take into account.

- 5.4.19 Advising in conference 10.4 £1,000.
- 5.4.19 Brief on hearing attending judicial mediation 12.4.19 £2,500
- 3.5.19 Drafting section 18 application £750.00
- Brief for the hearing on 8th July 2019 fee agreed at £2,000 but reduced because the mediation hearing on 5th April did not take place. Accordingly only the sum of £250 was sought.

It is difficult to follow exactly what is being claimed. On my understanding we are looking at the conference fee of £1,000, the drafting of the section 18 application of £750.00 and the brief fee for the hearing in July of £2,000. This gives a total Counsel's fee of £3,750 plus VAT of £750 giving rise to the total of £4,500 claimed.

23. No mention was made of the section 18 application at the hearing before us leading to the Order and no order was made on this application. In those circumstances I am not inclined to allow the £750 Counsel fees in that regard. I am told that Mr Sawtell's hourly rate was £250 which seems reasonable for somebody called since 2005. In those circumstances I would allow the conference fee of £1,000 and the brief fee of £2,000. Accordingly I would limit Counsel's fees to £3,000 plus VAT of £600 giving at total of £3,600.

24. I then turn to consider the other costs. The application and hearing fee have already been dealt with. If the Applicant chooses to pay by postal order that is a matter for him and not an element that should be payable by the Respondent**.** I therefore limit the fees payable to £300.

25. The charge out rate of £19 per hour accords with the CPR rules and is a reasonable starting point. I have noted the Respondent's objections to some of these claims of time as being excessive. There is no time recording available to me and I therefore have to assess them on a reasonable basis. I propose to take a somewhat rough and ready approach to this assessment in the absence of any time recording sheets or clear evidence as to time spent other than Appendix 2 of the statement. It seems to me that the preparation of the application to the tribunal would have taken some time but three hours is perhaps excessive. The instructions to Counsel do not seem to me to be recoverable as Counsel did not attend the directions hearing. What I would propose to do therefore is to allow the sum of £57 in respect of the application but disallow the £57 in respect of the attendance at the directions hearing.

26. The travel costs seem reasonable and I therefore allow the £59.20 and £29.60. The fees for the stationery and bundles is shown on a receipt at £61.37 but only £60.68 is sought. I am unclear what WMR Extra S/Mint Gum is supposed to be and nor do I consider it necessary for the Respondents to pay for two bags for life. My calculation is that this reduces this sum to £60.28.

27. The delivery of the bundles to the First Tier Tribunal and Counsel by taxi is in the grand scheme of things reasonable and I allow £37.60.

28. There is an invoice for £150 in respect of the printing of the bundle and I therefore allow that.

29. I am not clear what preparing application reply direction 4 is intended to refer to other than the statement of case. The directions require a brief supplementary reply and I would have thought that two hours would have been enough for that and I therefore reduce the £57 down to £38.

30. In regard to the printing of a witness statement I have a number of receipts but it is not wholly clear from these as to exactly what has been undertaken. There is a see a receipt from Jagger Print for £18 and I presume this relates to this item of expenditure and it is therefore allowed.

31. Insofar as the hand delivery of the statement to the FTT is concerned, I can see no reason why ordinary first class post could not have been used and I therefore disallow that.

32. The preparation of the bundles I reduce to two hours as once one is prepared it is merely a question of photocopying those numbered pages, thus the sum of £38 is allowed. There is already a charge of £150 for printing the bundles and I think therefore this is sufficient.

33. I have no time recording to establish the costs of £95. In a solicitors office emails coming in would not be charged as they would form part of the general overheads. On that basis it seems reasonable to me to reduce the time to 2.5 hours giving a figure of £47.50 for that element.

34. As to the costs of preparing for this application it seems to me that the sum claimed is excessive. The matter has been considered by way of summary

assessment and much reliance has been placed on documents previously prepared, for example the Applicant's Counsel skeleton argument. I would therefore only allow 3 hours giving a charge of £57.

35. I do not understand why the Spanish internet café charge for printing witness statements has been incurred. There is an earlier charge for the printing of a witness statement and in the absence of any proper explanation for this element I disallow it. The postage by way of special delivery of the witness statement and other special delivery postage is not allowed and this could have been dealt with by first class post. I will allow the perusal of the Respondent's statement of case and witness statement and attending the CMC being £19 for each of those elements.

36. To sum up I will allow Counsel's fees of £3,600, the application and hearing fee has already been dealt with at £300. As to the litigant in person costs I allow a total sum of £630.18

37. I calculate therefore that the total sum allowable in respect of the costs of this application are £4,230.18 together with the application and hearing fee of £300.

Andrew Dutton

Judge: A A Dutton

Date: 2nd October 2019

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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 identify the decision of the Tribunal to which it relates (ie 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.

Relevant additional matters

Litigants in person

46.5

(1) This rule applies where the court orders (whether by summary assessment or detailed assessment) that the costs of a litigant in person are to be paid by any other person.

(2) The costs allowed under this rule will not exceed, except in the case of a disbursement, two-thirds of the amount which would have been allowed if the litigant in person had been represented by a legal representative.

(3) The litigant in person shall be allowed –

(a) costs for the same categories of –

(i) work; and

(ii) disbursements,

which would have been allowed if the work had been done or the disbursements had been made by a legal representative on the litigant in person's behalf;

(b) the payments reasonably made by the litigant in person for legal services relating to the conduct of the proceedings; and

(c) the costs of obtaining expert assistance in assessing the costs claim.

(4) The amount of costs to be allowed to the litigant in person for any item of work claimed will be –

(a) where the litigant can prove financial loss, the amount that the litigant can prove to have been lost for time reasonably spent on doing the work; or

(b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate set out in Practice Direction 46.

(5) A litigant who is allowed costs for attending at court to conduct the case is not entitled to a witness allowance in respect of such attendance in addition to those costs.

(6) For the purposes of this rule, a litigant in person includes –

(a) a company or other corporation which is acting without a legal representative; and

(b) any of the following who acts in person (except where any such person is represented by a firm in which that person is a partner) –

(i) a barrister;

(ii) a solicitor;

(iii) a solicitor's employee;

(iv) a manager of a body recognised under section 9 of the Administration of Justice Act 1985[1]; or

(v) a person who, for the purposes of the 2007 Act[2], is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act).

Orders for costs, reimbursement of fees and interest on costs

13.—(1) The Tribunal may make an order in respect of costs only—

(a)under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b)if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(i)an agricultural land and drainage case,

(ii)a residential property case, or

(iii)a leasehold case; or

(c)in a land registration 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(**1**), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(**2**) and the County Court (Interest on Judgment Debts) Order 1991(**3**) 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.

Extracts from Willow Court

26. We also consider that tribunals ought not to be over-zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities in the preparatory stages of proceedings. As the three appeals illustrate, these cases are often fraught and emotional; typically those who find themselves before the FTT are inexperienced in formal dispute resolution; professional assistance is often available only at disproportionate expense. It is the responsibility of tribunals to ensure that proceedings are dealt with fairly and justly, which requires that they be dealt with in ways proportionate to the importance of the case (which will critically include the sums involved) and the resources of the parties. Rule 3(4) entitles the FTT to require that the parties cooperate with the tribunal generally and help it to further that overriding objective (which will almost invariably require that they cooperate with each other in

preparing the case for hearing). Tribunals should therefore use their case management powers actively to encourage preparedness and cooperation, and to discourage obstruction, pettiness and gamesmanship.

The element of discretion in rule 13(1)(b)

27. When considering the rule 13(1)(b) power attention should first focus on the permissive and conditional language in which it is framed: “the Tribunal *may* make an order in respect of costs *only ... if* a person has acted unreasonably….” We make two obvious points: first, that unreasonable conduct is an essential pre-condition of the power to order costs under the rule; secondly, once the existence of the power has been established its exercise is a matter for the discretion of the tribunal. With these points in mind we suggest that a systematic or sequential approach to applications made under the rule should be adopted.

28. 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.

29. Once the power to make an order for costs is engaged there is no equivalent of CPR 44.2(2)(a) laying down a general rule that the unsuccessful party will be ordered to pay the costs of the successful party. 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.” It therefore does not follow that an order for the payment of the whole of the other party’s costs assessed on the standard basis will be appropriate in every case of unreasonable conduct.

30. At both the second and the third of those stages the tribunal is exercising a judicial discretion in which it is required to have regard to all relevant circumstances. The nature, seriousness and effect of the unreasonable conduct will be an important part of the material to be taken into account, but other circumstances will clearly also be relevant; we will mention below some which are of direct importance in these appeals, without intending to limit the circumstances which may be taken into account in other cases.

43. The issues we have discussed above are only some of the factors which it will be relevant to take into consideration in determining applications under rule 13(1)(b). We conclude this section of our decision by emphasising that such applications should not be regarded as routine, should not be abused to discourage access to the tribunal, and should not be allowed to become major disputes in their own right. They 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.