



DECISION OF SHERIFF PINO DI EMIDIO

IN THE APPEAL

(DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND)

in the case of

ARIEL RAMIREZ-STICH, 27/3 Trinity Court, Edinburgh, EH5 3EE
per Community Help and Advice Initiative,
Riverside House, 502 Gorgie Road, Edinburgh, EH11 3AF

Appellant

and

(FIRST) MR LESLIE STRACHAN, 4 Mount Alverna, Edinburgh, EH16 6AW

And

(SECOND) MRS ANN STRACHAN, 4 Mount Alverna, Edinburgh, EH16 6AW

Respondents

**Act: Komorowski Advocate instructed through FLSU
Alt: Anderson Strathern, Solicitors, Edinburgh**

FTT Case Reference FTS/HPC/PR/18/1506

10 December 2019

Decision

The Upper Tribunal for Scotland:

1. Grants the appeal against the decision of the First Tier Tribunal (Housing and Property Chamber) dated 2 May 2019 and quashes the Order awarding expenses against the appellant and in favour of the respondents;
2. Remakes the decision and refuses the respondents' application for an award of expenses against the appellant;

3. Finds no expenses due to or by either party in respect of the appeal.

Reasons for Decision

Introduction

[1] This appeal relates to an award of expenses made under paragraph 40 of the First tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 SSI 2017/328 (“the 2017 Rules”). That paragraph is in the following terms;

“(1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.

(2) Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made.”

[2] On 19 June 2019 the appellant was granted permission by the First-tier Tribunal (“FtT”) to appeal its decision dated 2 May 2019 to make an award of expenses against her. The FtT gave permission on three separate grounds (numbers 1, 3 and 4). The FtT refused permission on two other grounds, these being numbers 2 and 5 in the application to the FtT for permission to appeal. On 19 July 2019 this Tribunal granted permission to appeal on grounds 2 and 5 as well.

[3] On 2 May 2019 the FtT made an order under paragraph 40 of the 2017 Rules. It was in the following terms: -

“(1) awards expenses as taxed by the Auditor of the Court of Session against the [appellant], on the basis that the [appellant] through unreasonable behaviour in the conduct of the case has put the Respondent (sic) to unnecessary or unreasonable expense, in terms of Rule 40 of the 2017 Rules; and

(2) the amount of the expenses awarded under Rule 40 are those required to cover the unnecessary or unreasonable expense incurred by the Respondents, namely: (i) Negotiating a Joint Minute of Agreed Evidence with the Applicant's Representative; (ii) Lodging Lists of Witnesses and Documents for the Hearing; (iii) Preparation for the hearing on 14 January 2019 (discharged on the day); (iv) Preparation for and attendance at the hearing on 15 March 2019, at which the parties were required to appear or be represented in order to make submissions in relation to the application for expenses."

Grounds of appeal to this Tribunal

[4] The paper apart annexed to the appellant's form UTS-1 sets out the various grounds on which the appellant has been granted permission either by the FtT or this Tribunal and also contained detailed submissions in support of each ground.

[5] Ground 1 is in the following terms: -

"The [FtT] was not entitled to find that the [appellant's] representative had acted unreasonably in not informing the [FtT] or the respondent that assistance was being sought from the Faculty of Advocates Free Legal services Unit (FLSU) (para. 3.11); no reasonable Tribunal could have found that the only reasonable course of a representative was to inform the [FtT] or the respondent."

[6] Ground 2 is in the following terms: -

"The [FtT] was not entitled to exercise its discretion in favour of making an award of expenses; no reasonable Tribunal could have done so where the [appellant] would have been entitled to maintain her application."

[7] Ground 3 is in the following terms: -

"The [FtT] did not give adequate reasons for finding that it should exercise its discretion in favour of the respondent."

[8] Ground 4 is in the following terms: -

"The [FtT] did not take proper account of the significance of the [appellant's] representative not being legally qualified; it wrongly took account of the reasonableness of the respondent's decision to instruct solicitors."

[9] Ground 5 is in the following terms:-

“The [FtT] erred in taking into account the intention to make a further application against the respondent, especially without taking into account that some of the expense incurred would have been required in any event for that claim at common law (para. 3.14).”

The paragraph numbers in grounds 1 and 5 refer to the decision of the FtT.

[10] After permission was granted by this Tribunal on grounds 2 and 5, the parties were allowed the opportunity to make further representations as is provided for in The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 no. 232 (“UT Rules”). On 22 August 2019 the respondents lodged a Response document consisting of 11 pages setting out at length the reasons why the respondents urged the Upper Tribunal to refuse all grounds of appeal and uphold the decision of the FtT. On 23 September 2019 the appellant submitted a commendably concise Reply on behalf of the appellant (prepared by different counsel) to the Response for the respondents. I decided that this appeal could be determined without a hearing having regard to the detailed written submissions that had been received from both parties. This decision was intimated to parties on 7 October 2019. The content of the submissions on each ground of appeal is touched on in the section dealing with reasons for decision.

The making of the Application

[11] The application was made to the FtT on 19 June 2018. It was submitted on behalf of the now appellant by Mr. Shaun McPhee a housing volunteer with Community Help and Advice Initiative, Edinburgh. The application sought a determination that the appellant had been unlawfully evicted from a property at 5/3 Montgomery Place, Edinburgh, EH7 5HA and damages for unlawful eviction from the respondents. The claim for damages was a

statutory claim under section 37 of the Housing (Scotland) Act 1988 and brought under paragraph 69 of the 2017 Rules. The respondents instructed solicitors. There was correspondence in relation to the sum being sought as damages by the appellant. Eventually this stated to be £12,000.

The Case Management Discussion

[12] On 21 November 2018 a Case Management Discussion (“CMD”) took place. One of the main areas of discussion was whether supporting evidence was required in the form of an expert report given that the claim was said to be based on a valuation of the property. The respondents’ position was that a valuation was required. The appellant’s lay representative suggested that having regard to the overriding objective the appellant who is of limited means should not be required to instruction a professional valuation but that the matter could be covered by the selection of a surveyor member to sit when the FtT heard the case. An oral hearing was fixed for Monday 14 January 2019 on the basis that no surveyor member would sit. The tribunal chair made clear to the appellant’s lay representative that it was for the appellant to prove the statutory claim for damages. Other orders were made in respect of the management of the oral hearing.

[13] For present purposes, having regard to the reasoning of the FtT discussed below, it is important to understand what did not happen at the CMD.

- a. The FtT did not order that the appellant should obtain and lodge an expert valuation report. It had power to do this and could have declined to fix a hearing until such evidence was provided.

- b. The appellant's lay representative did not tell the tribunal at the CMD that assistance had been requested from the Faculty of Advocates Free Legal Representation Unit ("FLRU"). A decision had yet to be made as to whether the request would be granted. The intention to instruct counsel was only disclosed once the appellant had the benefit of the advice of counsel through FLRU.

Summary of the subsequent Procedural History

[14] The FtT has helpfully and exhaustively set out the detailed procedural history in its decision of 2 May 2019 at paragraphs 1.1 to 1.44. I refer to that full history for its terms. The following summary is intended to highlight certain aspects to provide the context for the discussion that follows.

- a. Parties made progress with their preparations for the hearing by agreeing evidence and lodging other material though certain time limits specified by the FtT were not complied with. There was a difficulty due to the inability of the tribunal administration to accept submission of documents using a web link.
- b. On the afternoon of Friday 11 January 2019 the respondents sought a postponement as they had only received the appellant's productions that afternoon and could not complete preparation in time. The hearing was postponed to 15 March 2019.
- c. On 5 February 2019 the appellant's lay representative advised the FtT that counsel was now instructed through the FLRU and had requested a fresh CMD to request further Directions.

- d. On 6 February 2019 the respondents opposed any further CMD. Reference was made to paragraph 40 of the 2017 Rules and it was asserted that the appellant's behaviour was unreasonable.
- e. On 7 February 2019 the FtT refused to fix a further CMD.
- f. On 19 February 2019 the appellant's lay representative advised the FtT that the appellant proposed to expand her claim to include a common law claim under paragraph 70 of the 2017 Rules. This would be an additional claim and would require either amendment of the current application or submission of a fresh application. He also advised that a valuation report was now being instructed.
- g. There then followed substantial traffic of correspondence involving the FtT and both parties. The respondents expressed opposition.
- h. On 3 March 2019 the FtT issued Directions requiring parties to explain their respective positions further in writing.
- i. There then followed further very detailed correspondence from both parties to the FtT all as recorded in paragraphs 1.39 to 1.43 of the FtT decision of 2 May 2019.
- j. On about 11 March 2019 the appellant's representative advised that in light of the valuation received the claim under paragraph 69 was to be withdrawn. The appellant wished to seek leave to amend to proceed under paragraph 70. This continued to be opposed.
- k. On 14 March 2019 the FtT intimated its decision that (a) amendment of the application would not be allowed and (b) the hearing on 15 March 2019 would be restricted to the question of the respondent's claim for expenses only.

1. On 15 March 2019 the FtT heard extensive submissions on the very hotly contested issue of expenses. The FtT adjourned to consider the submissions made to it. These are fully recorded at paragraphs 2.7 to 2.56 of the Decision of 2 May 2019.

Reasons for Decision

[15] This appeal is brought under section 46 of the Tribunals (Scotland) Act 2014. It is based on the proposition the FtT has made an error falling within the fourth category identified in *Advocate General for Scotland v Murray Group Holdings Limited* 2016 SC 201 (IH) at 218, that is, where a fundamental error has arisen, such as taking account irrelevant considerations or reaching a conclusion no tribunal could have reached.

[16] The FtT made reference in its written decision to the English Upper Tribunal (Lands Chamber) case of *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 290 (LC) L. & T.R. 34. This decision discusses slightly differently worded English rules. The English UT in *Willow Court* was dealing with three separate appeals on awards of costs due to a party's unreasonable conduct. It is a decision which is intended to provide guidance to first tier tribunals within the statutory structure in which it has jurisdiction. All three cases related to disputes over service charges payable under the lease of a flat; in each case the dispute was between an individual leaseholder and a management company; and in each case the sum awarded was greater than the amount of the service charge in dispute. The statutory powers to award costs arose from section 29 of the Tribunals, Courts and Enforcement Act 2007. As regards the Property Chamber those powers were subject to

Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

which provides that 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 [three particular types of cases within its jurisdiction.]”

The language used is different from paragraph 40 of the 2017 Rules quoted above, though the focus is also on unreasonable actions.

[17] The Judgement of the UT was given by Martin Rodger QC Deputy Chamber

President who sat with the Chamber President of the First-tier Tribunal (Property Chamber).

It contains the following passage dealing with the approach to be taken to the question of whether a person has acted unreasonably for the purposes of Rule 13(1)(b).

“24. ... An assessment of whether behaviour is unreasonable requires a value judgment on which views might differ but the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level. We see no reason to depart from the guidance given in *Ridehalgh [v Horsefield [1994] Ch. 205]* at 232E, despite the slightly different context. “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?

“25. ... For a professional advocate to be unprepared may be unreasonable (or worse) but for a lay person to be unfamiliar with the substantive law or with tribunal procedure, to fail properly to appreciate the strengths or weaknesses of their own or their opponent's case, to lack skill in presentation, or to perform poorly in the tribunal room, should not be treated as unreasonable.

26. ...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. ... 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 ...”

[18] The case of *Ridehalgh v Horsefield* which is referred to in the passage quoted in the previous paragraph is an English Court of Appeal decision on wasted costs orders which discusses the conduct of legally qualified representatives.

[19] The FtT followed the approach approved in *Willow Court* that there is a three stage process in dealing with applications under Rule 40. The first stage is to make the finding that there has been unreasonable behaviour in the conduct of the proceedings; the second is to determine whether to exercise the discretion to make an award of expenses and the third is to determine just what expenses are to be awarded. As I understand it parties are in agreement that this is the correct approach. Care is required because the statutory provisions as to costs under consideration in *Willow Court* are phrased differently but the discussion of the general approach is valuable when dealing with paragraph 40 of the FtT Rules.

Paragraph 40(1) is expressed in permissive terms. The FtT may make an award if it considers that a party has behaved unreasonably but it is not compelled to do so. Ground 1 attacks the decision of the FtT at the first stage and grounds 2 to 5 attack the FtT's approach to the second stage. Against this background I turn to the stated grounds of appeal

Ground 1

[20] When evaluating the conduct of those who appear before the FtT, standards ought not to be set at an unrealistic level. In particular, caution should be exercised before lack of skill on the part of an unqualified representative is characterised as unreasonable conduct.

The role of the tribunal itself in the management of the case is also of significance in

evaluating the circumstances in which an award of expenses is sought under paragraph 40.

The FtT's decision on expenses in this case might well have been unimpeachable if the case

was an ordinary civil action for damages in the sheriff court where the rules on expenses are less restrictive than in tribunal proceedings. Proceedings before the FtT are also subject to the overriding objective which is set out in paragraph 2 of the 2017 Rules and provides substantial powers of management and imposes attendant responsibilities on the FtT. It states amongst other things:

- “(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.
(2) Dealing with the proceedings justly includes—
(a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;
(b) seeking informality and flexibility in proceedings;
(c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take;
... and
(e) avoiding delay, so far as compatible with the proper consideration of the issues.”

Paragraph 3(2) requires the FtT to manage the proceedings in accordance with the overriding objective.

[21] The respondents submitted that the FtT had exercised its discretion in an appropriate manner and this tribunal should not interfere. The appellant's reply pointed out that it is unreasonableness that is required, not a departure from ideal conduct.

[22] The unrealistic suggestion at the CMD that a surveyor should be a member of the tribunal panel was evidence of a lack of experience in the conduct of such proceedings. The same applied to the reliance on the overriding objective to seek to avoid engaging an expert surveyor to substantiate the quantum of the claim. Despite these signals, the FtT declined the opportunity to require that the appellant obtain a valuation at the CMD on 21 November 2018 even though it was well aware that the appellant's representative was taking an approach to valuation that seemed at the least doubtful. While lack of experience was

evident, it does not follow that the conduct of the proceedings by the lay representative was necessarily unreasonable. There is nothing in what is stated by the FtT to suggest that the lay representative was behaving in a way that was vexatious or designed to harass the respondents.

[23] There was a further opportunity to intervene in the management of the case when intimation was received on 5 February 2019 that counsel was now instructed a fresh CMD was requested yet the FtT chose to refuse that request. This was a significant development. The arrival of a legally qualified representative for the appellant presented an ideal opportunity for the FtT to re-visit its earlier concerns as to case preparation. Similarly the respondents' solicitors might have adopted a less aggressive (and perhaps wiser) tactic by welcoming a fresh opportunity for discussion and management before more expense was incurred in preparation. Despite these considerations on 7 February 2019, that is, more than five weeks prior to the scheduled date of the hearing, the FtT did not see fit to allow a forum for discussion. There was plenty of time available prior to the date of the re-scheduled evidential hearing for a reconsideration of the procedure fixed for the case in light of the concerns previously expressed at the CMD.

[24] The FtT's main conclusion on the reasonableness of the conduct of the lay representative on the expenses question is focused at paragraph 3.11 of its decision of 2 May 2019 where it stated:-

“The [FtT] considers that the [appellant], through her representative Mr McPhee, acted unreasonably on 21 November 2018 in letting the [FtT] fix further procedure as a full oral hearing when they were awaiting a decision on whether the [appellant] was to be given *pro bono* legal advice and representation and did not advise the [FtT] or the opposing party of that matter. ... Even if the [appellant] and her Representative were not familiar with tribunal procedure, had they advised the tribunal and [the respondents' solicitor] of that matter, it would undoubtedly have

led to a different procedural course than the one which was adopted. “

[25] The FtT has based its decision to make the appellant liable in the expenses which are covered by its Order on the failure to advise it that a decision was awaited on whether *pro bono* legal advice and representation would be provided. In their Response the respondents identified this passage as of significance and supported the FtT’s reasoning.

[26] The observation in the last sentence of the passage quoted from paragraph 3.11 (which was written in retrospect) is problematic. It is not clear why the provision of the information that the appellant had approached FLRU would have “undoubtedly” led a different procedural course being taken by the FtT. At that stage (the CMD) there can have been no certainty that *pro bono* legal advice and representation would be forthcoming so the FtT might equally well have decided that the case should proceed to a hearing. If the FtT was so concerned on 21 November 2018 that unreasonable or unnecessary expense might be occasioned to the respondents, it could have refused to fix an evidential hearing until such time as the appellant had produced an expert valuation.

[27] The FtT’s approach in criticising the lay representative in the final sentence of paragraph 3.11 cited above also does not sit well with what occurred when the FtT learned that counsel was instructed for the appellant as noted above. If the FtT would “undoubtedly” have taken a different procedural course had it known there was a prospect of *pro bono* legal advice and representation, one might question why it was unwilling to allow a further CMD when such *pro bono* legal advice and representation was actually in place.

[28] There is nothing in the conduct of the lay representative at the CMD which was irrational or improper. The failure to advise that assistance was being sought from FLRU

does not amount to unreasonable conduct even though it might suggest lack of skill on the part of the lay representative. The FtT has fallen into a fundamental error and that no tribunal could have found the conduct of the lay representative to be unreasonable. Ground 1 succeeds. This conclusion is sufficient for the appeal to succeed. Therefore the decision of the FtT will be set aside.

[29] It is appropriate that I record my views on the remaining grounds. As they all attack the approach of the FtT to the second stage of the process of reasoning under paragraph 40(1) of the 2017 Rules, I propose to discuss them together.

Grounds 2 and 3

[30] I have quoted paragraph 3.11 of the FtT decision above. After coming to the conclusion that the lay representative acted unreasonably, the FtT went on to discuss a number of other matters. At paragraph 3.14 the FtT noted that the respondents faced the prospect of defending a second set of proceedings. At paragraph 3.15 the FtT observed that the appellant could not rely on the fact that the respondents were legally represented to state that there was an inequality of arms such that none of her conduct should be viewed as unreasonable. At paragraph 3.16 the FtT noted that it took account of the fact that the appellant was represented by a housing volunteer until the point she received the assistance of counsel in February 2019 and that his actings have been taken to be the actings of the appellant who appointed him to act for her. At paragraph 3.17 the FtT stated again that it was satisfied that the appellant has behaved unreasonably. At paragraph 3.18 FtT stated that it is exercising its discretion to award expenses to the respondents in terms of paragraph 40 of the 2017 Rules.

[31] The respondents defended the FtT's reasoning and submitted that the appellant's submission in support of ground 2 was "astonishing". In reply the appellant submitted that the result was counterintuitive and liable to counterproductive results. In the absence of an order from the FtT requiring production of a valuation it was perverse to find the appellant liable in expenses. It was equally perverse that she found herself liable in expenses as an effect of having accepted counsel's advice and bringing the application to an end by her own hand.

[32] This submission made in the appellant's written Reply chimes with an observation made by Mummery LJ in *McPherson v BNP Paribas* [2004] EWCA Civ 569, a case relating to proceedings before the Employment Tribunal where he stated at [28]:-

"...the Tribunal should not adopt a practice on costs which would deter applicants from making sensible litigation decisions."

This passage is referred to in *Willow Court* at paragraphs 36 and 143.

[33] In respect of Ground 3 the respondents submit that the FtT did explain how it exercised its discretion under Rule 40 and refer to paragraphs 3-14 to 3.17 of the decision. The appellant contends that the FtT failed to explain why it decided to exercise its discretion to make an award in this case.

[34] The FtT in its decision did not expressly address the second stage issue of whether it was reasonable to make an order for payment of expenses. The discussion in the preceding paragraphs 3.14 to 3.16 has been summarised as it seems to be the only part of the decision where the FtT might have considered the question whether to exercise its discretion to make an award. Those paragraphs are immediately followed by the re-iteration at paragraph 3.17 that the appellant has behaved unreasonably. If this is the correct interpretation then the FtT

has failed to consider the second stage issue of whether to exercise its discretion at all. The FtT has not explained why, having decided that the behaviour was unreasonable, that it chose to exercise its discretion to make an award. This seems a reasonable interpretation given that following what is stated in paragraph 3.17, the FtT states baldly at paragraph 3.18 that it is exercising its discretion to make an award. In the event that paragraphs 3.14 to 3.16 were intended to set out the FtT's reasons for exercising its discretion to award expenses, that reasoning is inadequate. The matter referred to in paragraph 3.14 is irrelevant as is the fact referred to in paragraph 3.15 that the respondents were legally represented. There is no mention of the FtT's approach at CMD on 21 November 2018 when it did not order that an expert report would be required as a condition precedent of further procedure and on 7 February 2019 when it declined to fix a further CMD on being requested to do so. These were matters that ought to have been taken into account by the FtT in deciding whether to exercise its discretion to make an order under paragraph 40 of the 2017 Rules. Therefore I consider that grounds 2 and 3 are well founded.

Grounds 4 and 5

[35] These grounds amount to different part re-formulations of ground 3. I consider these grounds to be well founded for the reasons given above.

Practical Result of the Appeal

[36] The FtT's decision will be set aside. I have decided that it is appropriate for this Tribunal to remake the decision, as it is empowered to do under section 47(2)(a) of the Tribunals (Scotland) Act 2014. Having regard to the considerations set out at paragraphs 19

to 28 above I consider that that the conduct of the case by the lay representative did not involve unreasonable behaviour for the purposes of paragraph 40 of the 2017 Rules. I proceed on the basis that the application for an award of expenses fails at the first stage and I will make an order refusing the respondent's application for an award of expenses. Had I decided that matter in favour of the respondents, I would have decided as a second stage issue that the discretion should not be exercised in favour of making an award having regard to (a) the FtT's decision to allow matters to proceed at the CMD on 21 November 2019; and (b) its failure to order a further CMD on 7 February 2019. Had the FtT taken different decisions at these procedural stages expense might not have been incurred or would have been restricted. This approach would have taken account of the need not to hold the lay representative to too high a standard and not to deter a party from making a sensible litigation decision.

Concluding Observations

[37] Notwithstanding the decision in this appeal, it is important that all who act in a representative capacity in cases of this kind in the FtT bear in mind at all times the potential implications for those they represent should it be found in due course that their actions in the conduct of the FtT proceedings have been unreasonable and has led to another party being put to unnecessary or unreasonable expense. The responsibilities that lay representative undertake may involve substantial expense for others. There is a good reason for a rule like paragraph 40 of the 2017 Rules which requires those participating in tribunal proceedings to behave reasonably in the conduct of those proceedings. It should be clearly understood that paragraph 2(1)(c) of the overriding objective does not provide a substitute

for leading evidence to establish a party's case. All it does is impose an obligation on the FtT to conduct the proceedings fairly. It does not provide licence for unreasonable behaviour in the conduct of proceedings on the part of any person appearing before the FtT. Paragraph 3(3) of the 2017 Rules imposes an obligation on parties to assist the FtT. Agencies such as FLRU which seek to provide assistance to parties appearing in the FtT play an important part in the process but should bear in mind that decisions as to funding should be made promptly.

[38] It is difficult not to feel some dismay that only substantive hearing in this case (on 15 March 2019) was restricted to the issue of expenses and that the FtT's decision ran to 30 pages of single spaced type. In part this was due to the extensive submissions both oral and written made to the FtT. In *Willow Court* the UT said the following at paragraph 43 in relation to the treatment of application for orders for costs under Rule 13(1)(b) of the English rules.

“... 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.”

I agree with these observations. This decision is longer than I would wish it to be but I have been conscious of the need to treat with respect the lengthy and carefully constructed decision of the FtT which I am setting aside by supplying a fully reasoned decision.

Appeal provisions

[39] A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek

permission to do so from the Upper Tribunal within **30 days** of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.