9591

FIRST-TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AW/LAC/2013/0021**
Property	:	**52 – 58 Pont Street, London SW1X 0AE**
Applicant	:	**Pontiana Properties Limited**
Representative	:	**Judge, Sykes Frixou; Solicitors**
Respondents	:	**(1) 52 – 58 Pont Street Properties RTM Co Limited** **(2) The Wellcome Trust Limited**
Representative	:	**(1) Stitt & Co; Solicitors** **(2) CMS Cameron McKenna LLP; Solicitors**
Type of Application	:	**Administration Charges – Schedule 11, Commonhold and Leasehold Reform Act 2002**
Tribunal Members	:	**Mr L. W. G. Robson LLB (Hons)** **Mr H Geddes JP RIBA MRTPI**
Date and venue of Paper Determination	:	**25th November 2013** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**17th December 2013**

DECISION

Decisions of the Tribunal

(1) In respect of the costs issues raised by the Respondents, the Tribunal determined that;

a) The Respondents had proved that the Applicant had unreasonably made and conducted this application within the terms of Rule 13 against both Respondents, and the Tribunal thus decided that the Applicant was liable for the costs as noted below.

b) The Applicant shall pay the 1st Respondent's costs of £8,312.50 plus VAT.

c) The Applicant shall pay the 2nd Respondent's costs of £7,867 plus VAT.

(2) The Tribunal made the other determinations as set out under the various headings in this decision.

The application

1. By an application dated 23rd July 2013 the Applicant sought a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for a determination as to whether the administration charges demanded by the First and Second Respondents for a licence to carry out alterations were reasonable, reasonable in amount, and payable pursuant to a lease dated 14th June 2007 (the Lease).

2. Directions were originally given by the Tribunal in this case on 2nd August 2013 for a hearing on 16th October 2013. The issues noted there were:
a) demand for a bond of £35,000,
b) liquidated and ascertained damages of £2,000 per week,
c) payment of the 1st Respondent's legal and surveyors' costs in connection with the licence
d) The 2nd Respondent's legal and surveyors' costs.

3. On 11th October 2013, the Tribunal consented to the Applicant's request to withdraw the application, and vacated the hearing on 16th October 2013, subject to consideration and determination of both Respondents' costs pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. The Tribunal also gave Directions in that Consent for the parties to state their respective cases on this (limited) issue. The Tribunal offered the parties a paper determination, or an oral hearing if requested.

4. None of the parties requested an oral hearing.

5. The 1st Respondent sent its written statement of case on 21st October 2013. The 2nd Respondent did likewise on 23rd October 2013. The Applicant sent its Reply

on 1st November 2013. The 1st and 2nd Respondents sent their Responses on 7th November and 8th November 2013 respectively. The Tribunal considered and determined the case at a meeting on 25th November 2013.

Paper Determination

1st Respondent's Case

6. The 1st Respondent in its Statement of Case and Response submitted that it assumed the Applicant's withdrawal was an admission that it no longer took issue with the liability to pay and quantum of 1st Respondent's costs as detailed in its substantive Reply to the Application. The statements of 21st October and 7th November 2013 only dealt with the costs of these proceedings, under Rule 13 on the ground that the Applicant had acted unreasonably in bringing or conducting its application for the reasons noted below:
   a) The Applicant had withdrawn its application, admitting that the application had been misconceived.
   b) The application had been issued at a time when terms for a new Licence to Alter had been agreed in principle to enable ongoing works to the flat to be completed (effectively noted at para. 2 above). The only matter unresolved at that time was the need for and duration of existing scaffolding at the front of the building, and details of works requested by the 1st Respondent's surveyor. Both matters appeared to capable of resolution by the parties' respective surveyors, but instead the Applicant issued the application seeking to reopen all issues previously agreed, and further seeking that the 1st Respondent pay the 2nd Respondent's costs and surveyor's fees. The 1st Respondent considered that this last demand was an attempt to harass the 1st Respondent and effectively the other lessees at 52-58 Pont Street. The stated reasons for the application were set out in emails from the Applicant's solicitors. These amounted to "serious concerns" about the conditions sought to be imposed in the new licence, and the inability of Mr Philippedes (who appeared to control the Applicant) to contact the 1st Respondent's surveyor.
   c) In the 1st Respondent's view, the email of 24th July 2013 sent by the Applicant's solicitor made it clear that the application was made in order to pressurise the 1st Respondent into accepting the Applicant's terms for the new licence to alter. Detailed reference was made to that email in support of this contention.
   d) A further email of 6th August 2013 from the Applicant's solicitor threatened further proceedings against the 1st Respondent in a number of related and unrelated matters.
   e) After the 1st Respondent's original Reply to the application a further email was sent to both Respondents threatening yet further proceedings, particularly (but not exclusively) against the 1st Respondent.

7. The 1st Respondent submitted that the emails were not protected by the heading "Without Prejudice", as they contained no offers to settle, but only threats, and went beyond excessive zeal on the part of the Applicant's solicitor. In the event, the Applicant withdrew the application shortly before the hearing was due without complying with the Tribunal's Direction to serve a Response and supporting documents, despite being given two extensions of time to do so. The 1st Respondent had been put to wholly unnecessary and excessive costs as a result of the application, and by the way it had been pursued, hence the application

under Rule 13. A statement of the 1st Respondent's costs suitable for summary assessment was attached (as required by Direction 3) using form N260, and it was admitted that costs and counsel's fees relating to a hearing should be excluded if no hearing took place. The 1st Respondent's fees shown in the statement totalled £10,622.50 excluding VAT. The putative hearing fees (for deduction) were £1,125 for the solicitors, and £500 for Counsel, thus the amount claimed was £8,997.50.

8. Further, the Applicant's claim that insufficient evidence of the costs had been produced was misconceived in view of Direction 3. Also it was reasonable for a Grade A fee earner to be involved at all stages of the case due to its complexity.

9. In its response to the Applicant's Reply, the 1st Respondent submitted that having withdrawn its application, the Applicant could not dispute either liability for or the quantum of the costs. The Tribunal was invited to use Rule 22(4) of the Procedure Rules to impose as a condition of withdrawal that the Applicant be debarred from bringing any further applications relating to the 1st Respondent's costs relating to the previous licence to alter and previous breaches of the Lease, especially as the Applicant had failed to comply with Directions. The Applicant had only brought up the issue of the 1st Respondent's right to deal with the licence to alter on 4th October 2013 in an application for adjournment of the hearing. This in itself was an admission that the application was misconceived. The Applicant's claim to privilege relating to the negotiations on licence to alter had been waived by the application itself. The 1st Respondent denied intransigence over the scaffolding, as alleged. It had been up over 1 year with a request for a further 36 weeks (apparently to do internal fitting out works). Great inconvenience and damage had been caused to the 1st Respondent and other lessees. We were referred to the 1st Respondent's surveyor's advice of 26th July 2013 on this point.

10. Finally the 1st Respondent denied that the work done had been excessive. The major works had cost several hundred thousand pounds on a property likely to sell for £2 million. The claim of breach of the indemnity principle was denied. That matter had been certified in the costs statement in Form N260. Also the Applicant was not a director of the 1st Respondent. Fees were primarily a matter for the Directors and the managing agents, not members of the company. Nevertheless copies of the retainer letter were disclosed to the tribunal.

2nd Respondent's Case

11. The 2nd Respondent submitted in its Statement of Case and Response that the Applicant should also pay its costs pursuant to Rule 13. The costs mentioned in the new licence to alter and the application were payable pursuant to the licence. There was an absolute prohibition against alterations in the Lease. The Applicant had conceded this point in its application. The effect of the prohibition was that neither Respondent was obliged to act reasonably in connection with the licence to alter. This had been explained on several occasions to the Applicant by the 1st Respondent's solicitor on several occasions.

12. The 2nd Respondent noted that a previous licence to alter dated 9th September 2011 had been agreed. That licence stated that the work had to be completed by

9th September 2012, failing which the licence could be terminated by notice from the 1st Respondent. Such notice had been given on 14th September 2012. The Applicant had at no time prior to the application disputed the costs of the 2nd Respondent. The Applicant's solicitor in his email of 15th August 2013 accepted that such costs were the responsibility of the Applicant or the 1st Respondent. It was thus unreasonable to bring this application. The 2nd Respondent agreed that the Tribunal had required joinder of the 2nd Respondent for the reasons in the Tribunal's letter dated 14th August 2013. It was inequitable in such circumstances for the 2nd Respondent to pay its owns costs when it was required to be a party to the proceedings. The 2nd Respondent had provided a statement of costs suitable for summary assessment as directed. There was no obligation at this stage to provide copy correspondence, or notes to substantiate costs. Nevertheless the 2nd Respondent volunteered that Counsel was called in 2002, her hourly rate was £275 and that she had spent 3 hours in advising. Counsel's invoice was also attached. The 2nd Respondent explained how its fixed fee agreement operated. In fact its solicitors had spent considerably more time on the case than they could charge, and any further time charged related to work done in connection with the application, and the statement of costs. The sum claimed by the 2nd Respondent was thus £7,867 plus VAT

13. The 2nd Respondent supported the 1st Respondent's application for the Applicant to be debarred from applying for any further determination of the costs of the licence under Rule 22(4).

Applicant's Case

1st Respondent's costs

Liability

14. The Applicant denied liability for the costs of the licence, and submitted that the Tribunal only had jurisdiction to address the costs of these proceedings. The Applicant further denied that the application was misconceived. There was no evidence of that point. The terms in the licence had only been agreed subject to contract/without prejudice and were not relevant to these proceedings. The Applicant denied that the issue relating to scaffolding could have been "addressed" by the surveyors as the 1st Respondent was being intransigent and had refused a scaffolding licence outright. The question of costs had not been agreed and the correspondence was subject to contract/without prejudice and inadmissible. It should not have been put before the Tribunal.

15. The purpose of the application was to address the outstanding issues which the Applicant considered unreasonable. The Applicant denied that the reasons for making the application were as set out in the emails from the Applicant's solicitors in Appendix A of the 1st Respondent's statement of case, or that the reasons were "wholly inadequate". The Applicant also denied that the emails concerned (and particularly that of 24th July 2013), were to pressurise the 1st Respondent into accepting the Applicant's terms for the new licence. Further the email was marked "without prejudice" and therefore not relevant to these proceedings. The Applicant's solicitor's email of 6th August 2013 was similarly not relevant and could not be used in the context of these proceedings. The Applicant denied that the correspondence relating to the application and other issues was relevant to the actual application or its merits. It submitted that the

1st Respondent was relying upon correspondence "to manufacture the illusion that the Applicant acted unreasonably, rather than address the merits of the Application."

Quantum of costs

16. On the question of reasonableness of the costs, the Applicant submitted that no evidence had been submitted to substantiate attendances on the 1st Respondent, in the form of correspondence or telephone attendance notes, thus that element was entirely disputed. On the element of attendances on opponents, there was insufficient evidence to support the costs claim made, and it was therefore rejected. There was no supporting correspondence or attendance note to support the claim for costs of 6.5 hours for attendances on others. There was no evidence of work on documents. It was unreasonable for a Grade A fee earner to prepare the bundle and all documentation. This could easily have been done by a junior fee earner. Further the items for a hearing were not recoverable as there had been no hearing.

General points

17. The Applicant raised a number of general points;

a) The Applicant as a member of the 1st Respondent had not been notified of the retainer of its solicitor. The Applicant considered that the 1st Respondent should be put to strict proof of the retainer.

b) The Applicant had received no notice of any charges rendered by the solicitors acting for the 1st Respondent. It submitted there was a genuine concern that these costs had not been sought from the 1st Respondent in the first instance, thus breaching the indemnity principle.

2nd Respondent's costs

Liability

18. Referring to the 2nd Respondent's costs, the Applicant disputed that the 1st Respondent's solicitor had informed the Applicant's solicitor that the Tribunal had no jurisdiction on 24th July 2013, and a communication on 16th August 2013 was after the commencement of proceedings. The Applicant denied that it had accepted the amount of the 2nd Respondent's costs, although it admitted that the costs were payable but "the reasonableness and quantum of those costs had not been accepted or agreed". The issue of the 1st Respondent's ability to grant a licence was not addressed by either Respondent. The terms of the Licence dated 11th January 2008 were irrelevant to costs in this case. The Applicant did not include the 2nd Respondent in the Application. The Tribunal had named it. The 2nd Respondent and the Applicant sought to have it removed, but the Tribunal declined. It was unfair in such a case for the Applicant to pay the 2nd Respondent's costs.

Quantum

19. On the issue of time spent, there was no evidence or attendance notes, no evidence of the alleged costs cap, and no information as to time spent by Counsel or her year of call. The costs were therefore excessive.

Determination and Decision

20. The Tribunal considered the documents and evidence. Having done so, it firstly accepted the 1st Respondent's submissions that the "without prejudice" correspondence was admissible. Parties must remember that "without prejudice" correspondence is only privileged if it sent as part of a genuine effort to settle legal proceedings. In particular, the Tribunal decided that the Applicant's solicitor's emails dated 24th July and 6th August 2013 made no mention of an offer of settlement, but seemed merely bellicose, in essence threatening various further proceedings if the 1st Respondent did not agree to its demands. That was an improper use of the "without prejudice" procedure.

21. The Tribunal further decided that evidence relating to previous events was relevant to the question of reasonableness. To suggest otherwise was to ask the Tribunal to ignore all that had gone before. The question of reasonableness necessarily required consideration of motives as well as actions.

22. The Tribunal considered that the history of events would assist it in deciding the issue of the reasonableness or otherwise of the Applicant in making the application. This history (which was not substantially challenged) is summarised from the 1st Respondent's original Reply dated 22nd August 2013.

23. On 14.6.2007 the Lease was granted to the Applicant by the 2nd Respondent with Mr Philippedes acting as Guarantor. On 17.1.2008 a Licence to alter was agreed by the Applicant and 2nd Respondent. The Work was to be completed in 5 months. No work was done pursuant to that licence. In about 2010 the 1st Respondent (an RTM Company) was formed and took over management of the block. Protracted negotiations followed. The Applicant requested an open ended licence. The 1st Respondent refused but agreed to work being done in one year. Then on 9.9.2011 a Supplemental Licence granting extra time to complete work was agreed by the Applicant and 1st Respondent. (The Tribunal noted that the Applicant then ignored the 1st Respondent's reminders for payment of its costs as agreed in the 2011 licence). There then followed a lengthy period of dispute over the works and competence of the contractors between the Applicant and many other leaseholders in the block. Flat 15 (above Flat 10) and Flat 9 are particularly affected.

24. On 30th August 2012, the 1st Respondent erroneously issued a Section 146 notice on the Applicant. On 6th September 2012 the Applicant wrote to 1st Respondent in hostile terms accusing other leaseholders of acting vexatiously, and demanding evidence that the 1st Respondent's articles of association permitted it to decide that works should be completed on 9th September 2012 as stated in the 2011 licence. On 10th September 2012 the Applicant's contractors cut off hot water to all flats in the building. On 14th September 2012 the 1st Respondent terminated the licence and insisted that works on the flat should cease. Scaffolding previously erected remained in place causing many complaints. The Leaseholder of Flat 9 gave notice of issuing injunction proceedings. Mr Phillipedes requested a meeting to try and resolve the matter, This meeting took place on 4th December 2012, when the RTM company

indicated that it would grant a fresh consent on terms, including those disputed by the Applicant in this application. At that meeting Mr Phillipedes apparently threatened to move in undesirable tenants if his demands are not agreed. Work at No 10 continued, despite lack of consents. Negotiations continued through the early part of 2013, with some matters apparently being agreed, but not others. Nevertheless a draft licence was sent to the Applicant on 31st May. A sum of £2,500 was paid by the Applicant on 3rd July (although the Tribunal noted that the reasons, and the amount, did not correspond with the terms provisionally agreed), but a particular issue still disputed was that the Applicant demanded that the scaffolding be re-erected for the entire duration of the works, to store materials and provide a site office. This was considered unnecessary by the 1st Respondent's surveyor. The Applicant had also not provided satisfactory specifications to the surveyor for glass structures within the flat. It claimed that it would be sufficient to produce Building Regulations approval after the event.

25. On 6th July 2013 the Applicant issued an ultimatum to the 1st Respondent demanding that all outstanding points be agreed by 2pm on the next working day (15th July), failing which it would issue an application to the Tribunal. The leaseholder on the ground floor objected strongly to the re-erection of scaffolding, having had his flat suffer from a severe loss of light for over a year already. On 16th July the 1st Respondent's solicitor replied dealing with the few remaining points in the draft licence. It was made clear that the erection of scaffolding for the duration of the work was not acceptable, but if required for the installation of new windows it would be permitted for a strictly limited period. The outstanding glass specification was also requested.

26. On 23rd July two emails were received from the Applicant. One email stated that the Tribunal application had been issued as Mr Philippedes had been unable to contact the 1st Respondent's surveyor. The other email was marked "without prejudice" and has been discussed above.

27. It appears that the Applicant was in arrears of service charge totalling £8,025.48 on 22nd August 2013.

28. The Tribunal noted a number of errors and discrepancies of detail in the respective parties' submissions on factual questions as to who did what, and when. However none of these seemed of major consequence, save in one respect, relating to the Applicant's allegation of delay and intransigence by the 1st Respondent. The correspondence showed that it was pointed out to the Applicant on several occasions immediately prior to the date of the application that certain works specifications and building consents were still required (notably on 12th July 2013), and that the 1st Respondent was requesting further advice on the question of scaffolding. It appears that the Applicant's own contractors had yet to formulate a detailed specification at that time. In those circumstances, commencing this application seemed premature. The overall impression gained was that the Applicant had conducted itself with very little or no regard to the effect the works were having on other leaseholders or their interests over a protracted period. Also works continued at times when it was abundantly clear that the Applicant had no licence or authority to do so. To complicate matters, the Applicant was a foreign limited company, which

would make enforcement of agreements very difficult for the Respondents, if it chose not to abide by its legal obligations. By 2013, there were already several instances of failure to do so.

29. Further, the Tribunal particularly noted the terms of the "without prejudice" emails dated 24th July and 6th August 2013 from the Applicant's solicitor. In terms, they were threatening, without any genuine offer to settle or conciliate. They demanded that the Respondents should agree to the Applicant's terms, or face further multiple legal actions.

30. It also noted that after the application was made, the Applicant did not comply with the Tribunal's Direction 4c) of 2nd August 2013, to make a full Reply and provide supporting evidence. Instead it requested two extensions, then requested to withdraw the application.

31. The Tribunal also decided that at the time it issued the application, the Applicant was not ready to proceed with it, as it should have been. This quickly became clear when the Respondents did not back down, but prepared to put their respective cases as directed. The Applicant then decided to withdraw. That fact, as well as the unattractive stance of the Applicant in previous dealings, led the Tribunal to decide that this was a case of unreasonable behaviour within the terms of Rule 13. The Applicant therefore incurred liability for the 1st Respondent's costs under that Rule.

32. The Tribunal rejected the Applicant's submissions casting doubt on the ability of the 1st Respondent to grant the licence, or whether joining the 2nd Respondent at the Tribunal's instance was correct. This point had not been pleaded in the original application, and was introduced by a side wind in an application for adjournment. The point also had no merit. The 1st Respondent as an RTM Company is required by Section 98 of the Commonhold and Leasehold Reform Act 2002 to carry out certain functions, including the grant of licences to alter. Section 98(4) requires it to notify the landlord of applications, and Section 99 gives the landlord certain rights to object to such applications. Once the RTM had given notice and taken over the management, (and no evidence was put forward that it had not) it was obliged to deal with the application for licence. That does not mean that the RTM Company can grant such a licence without reference to the landlord. It is in fact a manager. The written agreement of any person objecting to a licence is required. Joining the 2nd Respondent (the landlord) to the application was thus necessary and desirable. The Applicant could not escape liability for the 2nd Respondent's costs merely because it had not sought to join it to the proceedings.

33. The Tribunal rejected the Applicant's general points suggesting that the 1st Respondent's failure to notify it of the fee retainer and charges of the 1st Respondent's solicitors was a matter for investigation on the basis that the indemnity principle had been infringed. The Tribunal accepted the 1st Respondent's submission that as the Applicant was not a director of the company he had no right to be so notified. Further, the 1st (and 2nd) Respondents had certified their statements of costs to deal with that very point.

34. The Applicant submitted that on the question of quantum in respect both Respondents, there was insufficient evidence. However the Tribunal again accepted the submissions of the Respondents on this point. They had complied with the Directions as directed, particularly relating to the form of their statements of costs. Further, the Applicant's case on this point seemed to be little more than a series of general assertions which might have been more impressive if supported by detailed evidence of the appropriate grade of fee earner, and of time spent. The bundle and pleadings in this case demonstrate a complex case. Clearly much time needed to spent on it. Only one specific item was raised, i.e whether it was necessary for the 1st Respondent's solicitors to use a Grade A fee earner to prepare the bundle and all documentation. The costs summary provided did not in fact suggest that, but it did suggest that some element of work done on the documents would have been preparing the bundle and documentation. The Tribunal considered that a senior fee earner would be required to consider the documents properly, particularly in a complex case where the question of excluding documents was raised. The Tribunal, in the absence of any further detailed submissions on the point, decided to allow that item to stand in full.

35. The Tribunal therefore decided (taking into account that the hearing fees were not chargeable) that the Applicant should pay the 1st Respondent's costs of £8,312.50 plus VAT, and the 2nd Respondent's costs of £7,867 plus VAT, such costs to be paid within 21 days of this decision.

36. Relating to both Respondents' application under Rule 22(4) that the Tribunal impose as a condition of withdrawal that the Applicant be debarred from bringing any further applications relating to the 1st Respondent's costs relating to the previous licence to alter and previous breaches of the Lease, the Tribunal considered that such application had been made too late. It should have been made when the Tribunal was being asked to consent to the withdrawal. At this point the Tribunal can only properly deal with questions of costs. Nevertheless, the Tribunal considers that any further application involving substantially the same subject matter to this application may well be deemed an abuse of process. Further, in view of the Tribunal's limited jurisdiction, many issues potentially raised by this case appear likely to be more satisfactorily disposed of by the County Court. The parties' advisers should carefully consider this point if the parties remain unable to settle their differences.

Signed: Lancelot Robson
Mr L. W. G. Robson LLB (Hons)
Tribunal Judge

Dated: 17th December 2013

Appendix

Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

Rule 13

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 and the County Court (Interest on Judgment Debts) Order 1991 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.

Rule 22

22. (1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it—

(a)orally at a hearing; or

(b)by sending or delivering to the Tribunal a written notice of withdrawal.

(2) A written notice of withdrawal must—

(a)be signed and dated;

(b)identify the case or part of the case which is withdrawn;

(c)state whether any part of the case, and if so what, remains to be determined;

(d)confirm that a copy of the notice of the withdrawal has been provided to all other parties and state the date on which this was done;

(e)include the written consent of any of the other parties who have consented to the withdrawal.

(3) Notice of withdrawal will not take effect unless the Tribunal consents to the withdrawal.

(4) The Tribunal may make such directions or impose such conditions on withdrawal as it considers appropriate.

(5) A party which has withdrawn its case may apply to the Tribunal for the case to be reinstated.

(6) An application under paragraph (5) must be made in writing and be received by the Tribunal within 28 days after—

(a)the date of the hearing at which the case was withdrawn orally under paragraph (1)(a); or

(b)the date on which the Tribunal received the notice under paragraph (1)(b).

(7) The Tribunal must notify each party in writing of a withdrawal under this rule.

(8) Any party may, within 28 days after the date of receipt of notification by the Tribunal under paragraph (7), apply for a case, or part of a case, which has been withdrawn under this rule to be re-instated.
