

**THE TRIBUNAL PROCEDURE (FIRST-TIER  
TRIBUNAL)  
(PROPERTY CHAMBER) RULES 2013**

**THE NEW RULES ON COSTS**

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## The new jurisdiction



The fundamental features of the changes in relation to costs under the 2013 Rules are:-

- The former £500 ceiling which governed the LVT's power to award costs in paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 has now disappeared in England.
- So too has the test that such costs would only be awarded where a party's conduct is frivolous or vexatious or otherwise an abuse of process.

The new rules on costs are set out in Rule 13 of the 2013 Rules and they contain a variety of provisions regarding the procedure applicable to the new jurisdiction on costs.

## The policy behind the changes



The new costs regime from the First-tier Tribunal is therefore a move away from a costs regime where there was no cost-shifting at all (save for the £500 limit jurisdiction) to a regime where generally an award of costs may be made where costs have been incurred as a result of a party's unreasonable conduct or a representative's unreasonable conduct or in 'wasted costs' situations.

The changes brought about by the new Rules were the result of a recommendation in the Report of the Costs Review Group to the Senior President of the Tribunal of December 2011.

The policy behind the changes was explained in paragraph 28 of the Report as follows:-

*“28. ... an award of costs may be made only where costs have been incurred as a result of a party’s or representative’s unreasonable conduct. This tends to be used in tribunals exercising jurisdiction between citizens and the State where the nature of the proceedings is such that legal representation, although not necessarily expected, is more common and where the proceedings may be lengthy so that substantial costs can be incurred. Even where legal representation is common to both sides, it tends to be used in the regulatory field where even in the Courts costs do not necessarily follow the event. It is also used in citizen v citizen jurisdictions when legal representations, although not necessarily expected, is fairly common but where it is considered that the parties are likely not to have equal means.”*

## The source of the new jurisdiction



The source of the new jurisdiction is section 29(4) of the Tribunal Courts and Enforcement Act 2007, the provisions of which are as follows:-

*“Costs or expenses*

*(1) The costs of and incidental to—*

*(a) all proceedings in the First-tier Tribunal, and*

*(b) all proceedings in the Upper Tribunal,*

*shall be in the discretion of the Tribunal in which the proceedings take place.*

*(2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.*

*(3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.*

*(4) In any proceedings mentioned in subsection (1), the relevant Tribunal may—*

*(a) disallow, or*

*(b) (as the case may be) order the legal or other representative concerned to meet,*

*the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.*

*(5) In subsection (4) “wasted costs” means any costs incurred by a party—*

*(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or*

*(b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.*

*(6) In this section “legal or other representative”, in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf.*

*(7) In the application of this section in relation to Scotland, any reference in this section to costs is to be read as a reference to expenses.”*

## What orders for costs can now be made?



Pursuant to this provision, Rule 13(1) now allows:-

- “(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.*



In relation to the specified categories of cases:-



*“agricultural land and drainage case” means:-*

*“any case in respect of which the Tribunal has jurisdiction conferred—*

*(a) by or under any enactment specified in section 6A(2) of the Agriculture (Miscellaneous Provisions) Act 1954; or*

*(b) by the Hill Farming Act 1946;”*

*“residential property case” means:-*

*“a case in respect of which the Tribunal has jurisdiction conferred by or under the 1983 Act, the Housing Act 1985 or the 2004 Act;”*

“leasehold case” means:-

*“a case in respect of which the Tribunal has jurisdiction under any of the enactments specified in section 176A (2) of the Commonhold and Leasehold Reform Act 2002;”*

“land registration case” means:-

*“a case in respect of which the Tribunal has jurisdiction under the 2002 LR Act;”*

## What costs are within the “acted unreasonably” category of costs under Rule 13(1) (b)



The classic cases will be

- the unwarranted last minute application for an adjournment situation;
- an unreasonable failure to comply with directions, such that if a party has been put to expense in obtaining compliance with a direction from another party, he should now be able to recover the expense incurred in securing such compliance.

## What costs can be ordered?



Rule 13 (2) provides that the Tribunal may make an order requiring a party to reimburse to any other part the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

## Can the Tribunal make an order of its own initiative?



Rule 13(3) provides that the Tribunal may make an order under this rule on an application or on its own initiative.

## How can an application be made?



Rule 13(4) provides that:-

*“(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.”*

## When must an application for costs be made?



Rule 13(5) provides that:-

*“(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.”*

Must a party have the opportunity to be heard before an order for costs is made against the party?

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Rule 13(6) provides that:-

*“(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.”*



## How will the amount of costs be determined?



Rule 13(7) provides that:-

*“(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.”*

## Can interest be awarded on costs?



Rule 13(8) provides that:-

*“(8) The Civil Procedure Rules 1998, 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.”*

## Can the Tribunal make an order for a payment on account of costs?



Rule 13(9) provides that:-

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

## What costs order can be made for cases commenced before 1 July 2013?



The old rules on costs apply to cases which began before 1 July 2013. This is the effect of paragraph 3(7) of Schedule 3 *which provides as follows:-*

*“An order for costs may only be made if, and to the extent that, an order could have been made before 1st July 2013.”*

## A potential injustice?



It is to be noted that paragraph 104 of the Report of December 2011 contained the following comment:-

*“104. We note that these tribunals have jurisdiction in what are effectively party and party disputes such as the price to be paid on enfranchisement by a leaseholder or the amount of a service charge. If and when these jurisdictions are brought into the F-tT, the TPC might wish to consult as to whether the introduction of wide costs-shifting powers than those which are currently available would be appropriate, at least in high value leasehold enfranchisement cases, but we make no positive recommendation on this point.”*