

# First Tier Tribunal Procedure & Tactics



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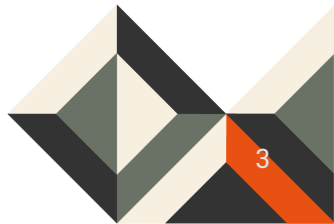
# What is the FTT?

- FTT – Creature of statute
- Part of the streamlined two-tier tribunal system (appeal to Upper Tribunal (Lands Chambers))
- Applicable rules are the *Property Chamber Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013*



# Application to the FTT

- Rule 26 – start proceedings
- Rule 27 – Time Limits
- Rule 29 – Notice to Respondents, interest persons
- Rule 30 – the Respondent



## FTT – Case Management Powers

The Tribunal has a general power to regulate its own procedure, which can include, *inter alia* (rule 6(3)):

- Extend or shorten the time for compliance with a rule or direction: rule 6(3)(a)
- Deal with an issue as a preliminary issues: rule 6(3)(g)
- Adjourn or postpone a hearing: rule 6(3)(j)
- Stay proceedings: rule 6(3)(m)



# General Powers & Provisions

## Rule 19 – Expert Evidence

- None w/o permission
- Provides the power to direct that a single joint expert is instructed and affords the Tribunal a large degree of control over expert evidence

## Rule 21 – Site Inspections

- Rule 21 allows the Tribunal to inspect the land, property or premises which may assist



# Non-Compliance in the FTT

In the case of non-compliance with a rule, or direction, the Tribunal may take such action as the Tribunal considers just (rule 8(2)). This general power includes, *inter alia*:

- Waiving the requirement (rule 8(2)(a))
- Requiring the failure to be remedied (rule 8(2)(b))
- Striking out a parties case (rule 8(2)(c))
- Barring or restricting a party's participation in the proceedings (rule 8(2)(e))



# Striking out applications in the FTT

- The Tribunal has the power to strike out applications.
- The Tribunal **must** strike out the whole or part of a case if (rule 9(2)):
  - it does not have jurisdiction in relation to the whole or part of proceedings; **and**
  - it has not transferred the whole or part of the proceedings to another court or tribunal under rule 6(3)(n)(i)



# Striking out applications in the FTT

- The Tribunal **MAY** strike out the whole or part of a case where *inter alia*:
  - there has been a failure to comply with the directions, stating non-compliance by a stated date would lead to the application or part of it being struck out
  - the applicant has failed to co-operate with the Tribunal
- **MUST** first given the parties the opportunity to make representations (rule 9(4))
- Rule 9 applies to Respondents as it does to Applicants, save as pursuant to rule 9(7)





# FTT & The Hearing

- Must be held in public (Rule 33)
- 14 days notice unless (a) parties consent to a shorter notice period or (b) there are urgent or exceptional circumstances (Rule 32)
- Relatively informal, but will follow the procedures set by the Tribunal
- Members of the Tribunal panel may ask questions
- Consent order (Rule 35)
- Withdrawal (Rule 22)



# FTT Decisions

The Tribunal may give a decision orally at a hearing and must provide to each party as reasonably practicable after making a decision (Rule 36):

- A decision notice stating the decision
- Written reasons for the decision
- Notification of right to appeal



# Correcting, setting aside, appealing & reviewing FTT decisions

- Slip rule (Rule 50)
- Set aside (Rule 51)
- Application for permission to appeal (Rule 52)
- Tribunal's consideration of application to appeal (Rule 53)
- Review of decisions (Rule 55)



# FTT & Costs

Starting point = each party bears their own costs

BUT limited power in rule 13(1) for Tribunal to make an order for costs:

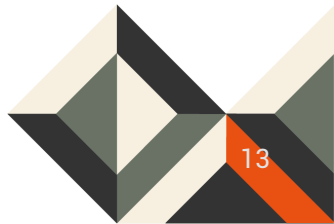
- “Wasted costs”
- Where a person has acted unreasonably
- In a land registration case
- In telecoms cases transferred from UT



# FTT & Costs – unreasonable behaviour

***Willow Court Management Co (1985) Ltd v Alexander* [2016] ULUT 290 (LC):**





- Guidance on what constitutes “unreasonable behaviour” under rule 13
- 3-stage analysis
- Would a reasonable person in the position of the party have conducted themselves in the manner complained of?
- “applications [under rule 13] 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.”



# Thank you

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