

IN THE COUNTY COURT AT LEEDS

Case. No. M01LS166

Courtroom No. 17

The Courthouse
1 Oxford Row
Leeds
LS1 3BG

Tuesday, 14th July 2026

before

HIS HONOUR JUDGE WALSH

DACRES

- v -

LEEDS CITY COUNCIL

MR LEE appeared on behalf of the CLAIMANT
MR RAFFERTY appeared on behalf of the RESPONDENT

WHOLE HEARING

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1 **Case called.**

2 JUDGE WALSH: Thank you. Good morning, both.

3 MR LEE: Good morning, Your Honour.

4 MR RAFFERTY: Good morning, Your Honour.

5 JUDGE WALSH: Sorry to have kept you. I was reading Mr Rafferty's written argument.

6 MR RAFFERTY: Your Honour, may I apologise for the lateness-

7 JUDGE WALSH: It is not your fault.

8 MR RAFFERTY: I was instructed after the time of compliance. I apologise for [inaudible].

9 JUDGE WALSH: You were instructed at five o'clock yesterday, were you?

10 MR RAFFERTY: After work on Friday.

11 JUDGE WALSH: Right. It beggars belief how long people wait, but there we are. Not

12 your fault. Thank you. Mr Lee, good morning.

13 MR LEE: Good morning, Your Honour.

14 JUDGE WALSH: Okay, I have – well, I have read the written arguments. I have read the

15 extensive transcript of judgment. In typical style, Judge Joslin, he does not waste

16 words, does he? There we are. I have got the grounds. I think I have got the points

17 in mind, so you can be as concise as you think you need to be.

18 MR LEE: I am grateful, Your Honour.

19 JUDGE WALSH: I know there is an authorities bundle as well, but-

20 MR LEE: Yes, I am going to take you through a few paragraphs in there, but I won't be

21 spending too long. I won't be labouring the point – as you say, you have read the

22 arguments. You have got the points, so if you would like me to just skim over it, then

23 I can.

24 JUDGE WALSH: Well, you both refer to authority, but I am not convinced it particularly

25 helps me-

26 MR LEE: No.

27 JUDGE WALSH: - in this so – I mean, I am not stopping you if you think I really need to

28 see paragraphs of the various authorities, then so be it-

29 MR LEE: Yes.

30 JUDGE WALSH: - but I am not convinced I do, but I will let you develop your arguments

31 and see where ...

32 MR LEE: I am grateful, Your Honour. I mean, in all honesty, certainly the authorities that

33 I have included, five of the six of them are at circuit judge level anyway, so they are

34 only persuasive in nature.

35 JUDGE WALSH: Yes.

1 MR LEE: *Birmingham City Council* obviously is a Court of Appeal authority, so there might
2 be a paragraph that I refer you to there, but we will see how we go. By all means, if
3 you just want me to move on, then just tell me to move on.

4 JUDGE WALSH: Yes, I think I have been referred to these recently, at least some of them,
5 because I had an appeal on, I think, it was a cost point in relation to the costs up to the
6 point of allocation so it was a *Birmingham City v Lee* point, yes, so that one I am pretty
7 familiar with, but I may have read some of the other ones. I am just now looking at
8 the judges – Freedman, yes, Robinson, yes. Oh, Jonathan Owen - was that second,
9 yes? Yes, I had that one. I think possibly number two as well. The only one that is
10 not standing out to me is number six.

11 MR LEE: That's a very recent-

12 JUDGE WALSH: Is it?

13 MR LEE: - that's a very recent decision. It's one that I was involved in. I settled the papers.
14 I didn't attend the hearing because I was unavailable, but yes.

15 JUDGE WALSH: Okay. Yes, I do not think I know that one.

16 MR LEE: Yes, I'll take you briefly through that one then.

17 JUDGE WALSH: Okay. I have got a preliminary view on this, and I just do not know
18 whether to canvass it with you or just to let you both develop your arguments. The
19 way I read the judgment, it is economical. Look at paragraph two. It seems to me the
20 judge was clearly aware of the financial parameters, and I think if you look at
21 paragraph four, it also appears he probably undertook a balancing exercise - has
22 expressed himself as taking a step back and looking at the claim in general terms.
23 The concern I probably have, there is no specific reference made to 26.13 and those
24 factors therein. So it's other than value and expert evidence, it is not easy to discern
25 quite what factors were taken into account and for the reasons concluding that this was
26 the low end of the spectrum, if you wish. So, I think - if I think there is a flaw, and to
27 be fair, the one document I forgot to read was what Judge Gargan said in the granting
28 of permission to appeal, so I am not sure on what basis he did that.

29 MR LEE: Yes, HHJ Gargan granted permission on all grounds, but primarily it was because
30 he considered that the judge's assessment of the general damages claim was potentially
31 open to criticism.

32 JUDGE WALSH: Okay. Well, I think that is – I am giving you an indication of where I
33 think there may be a flaw, as I see it, and I think you can develop your submissions
34 how you see fit based on their indication, or ignoring their indication.

35 MR LEE: Your Honour, of course, I won't ignore it, but in my submission, and you will see

1 as I get onto my submissions, the claims case is actually there is a fundamental flaw
2 in Judge Joslin's approach-

3 JUDGE WALSH: Yes.

4 MR LEE: - that effectively vitiated his decision, and if you will allow me, I'll give that
5 argument now.

6 JUDGE WALSH: Yes.

7 MR LEE: And would you like me to stand when addressing you, or are you happy for me
8 to sit?

9 JUDGE WALSH: Whichever you are more comfortable with.

10 MR LEE: [Inaudible] then I'll sit if that's okay.

11 JUDGE WALSH: Of course.

12 MR LEE: Your Honour, it goes to really ground one first, which-

13 JUDGE WALSH: Yes.

14 MR LEE: - is the judge failed to identify the correct starting point for allocation, which
15 fundamentally undermined the rest of his decision-making process. Now, as you well
16 know, allocation in a housing conditions claim requires the Court to apply effectively
17 a two-stage approach or test.

18 JUDGE WALSH: Yes.

19 MR LEE: The Court looks at CPR 26.9(1)(b)-

20 JUDGE WALSH: Yes.

21 MR LEE: - or (c) if the claim is dealing with an occupational contract in Wales. Once the
22 Court has ascertained the normal track for the claim, the Court is then to go to 26.13
23 in order to consider the factors and effectively determine whether the starting point,
24 being the normal track of the claim, is indeed the end point. When doing that, the
25 Court has to have regard to particular guidance given in the practice direction, and I
26 place particular emphasis, and I will develop this later on, on Practice Direction 26,
27 paragraph 16.1

28 JUDGE WALSH: Okay.

29 MR LEE: What that effectively says is that if the Court is allocating a claim to the fast track
30 for which the-

31 JUDGE WALSH: Sorry, take me to the practice direction you are referring to.

32 MR LEE: Yes. I am working from an electronic copy, unfortunately-

33 JUDGE WALSH: Right.

34 MR LEE: - so I have not got a page number, I'm sorry.

35 JUDGE WALSH: Okay, so it is PD26?

1 MR LEE: Paragraph 16.1.

2 **Pause.**

3 JUDGE WALSH: Yes.

4 MR LEE: And that actually is the grounding for ground three because what the claimant
5 says, or the appellant says, is that when the judge has taken a step back, he hasn't
6 actually identified what factors would make it unjust to allocate the claim to its normal
7 track. I say he has not done that because he hasn't identified what the claim's normal
8 track should be. That's a glaring omission, I say, from the judgment.

9 **Pause.**

10 MR LEE: Now, when considering value for stage one purposes in 26.9(1)(b)-

11 JUDGE WALSH: Yes.

12 MR LEE: - in my submission, the Court is engaged in a fairly straightforward assessment
13 based on the statements of case and the available evidence. Now, that finds support in
14 the case of *Court v Beyond Housing Ltd* at paragraph 4.25[?], if you would like to look
15 at that. That is on-

16 JUDGE WALSH: Just take it to me briefly, yes. What paragraph are we looking at?

17 MR LEE: Yes. Paragraph 25, page 48 of the authorities bundle.

18 **Pause.**

19 JUDGE WALSH: Did you say 25?

20 MR LEE: 25, yes.

21 **Pause.**

22 JUDGE WALSH: Yes.

23 MR LEE: So at stage one it's a very straightforward assessment based on value. Of course,
24 it is always for the Court to determine value, but if the claim, on the face of it, looks
25 realistic, then the starting point is – it certainly ought to be accepted unless there is
26 something which those doubt upon that - the value that's placed on it. As I say,
27 thereafter the Court should consider the factors listed in 26.13 to determine whether
28 the starting point is the end point. That gathers support from multiple authorities that
29 I have put before you, Your Honour: *Matthews v Nottingham City Council* at
30 paragraphs 45 to-

31 JUDGE WALSH: Just take me to the page number again.

32 MR LEE: Yes, 35 to 36.

33 **Pause.**

34 JUDGE WALSH: Paragraph?

35 MR LEE: So paragraphs 45 to 48.

1 **Pause.**

2 JUDGE WALSH: Just bear with me a second. Rosie, have you got any Post-it notes? If

3 not, on my desk I think I have got a little pad. I meant to bring them in, and I forgot.

4 Could you – would you? Thank you so much.

5 **Pause.**

6 JUDGE WALSH: Yes.

7 MR LEE: The general gist of that approach, Your Honour, is also echoed in the *Bellion* case

8 that you say you are not familiar with - page 62 at paragraph 18.

9 **Pause.**

10 JUDGE WALSH: Is it just paragraph 18?

11 MR LEE: Yes.

12 JUDGE WALSH: Yes.

13 MR LEE: So I'm going to borrow part of the judgment from *Birmingham & Lee* because

14 effectively, what all that means is providing there is a claim for repair works, a tenant's

15 claim in a disrepair case will be a fast track case if either the cost of repairs or a

16 consequential damages claim exceeds £1,000.

17 JUDGE WALSH: And whose cost of repair are we looking at?

18 MR LEE: Well, that is – there is a dispute there, but ultimately I say it should be the

19 appellant/claimant's because, yes, it's costing an awful amount-

20 JUDGE WALSH: Is there authority on this point?

21 MR LEE: Well, yes. So *Jalili v Bury City Council* was a – did get a district judge authority

22 which effectively said it should be the landlord because they are doing the works, but

23 since there have been two circuit judge authorities. There has been

24 *Stojalowski v Bristol City Council*, where HHJ Blohm KC expressly disavowed *Jalili*

25 as being a good decision – the correct decision, and there's also the *Court v Beyond*

26 case, which is HHJ Robinson. They both conclude that open market rate - local market

27 rates should be considered.

28 JUDGE WALSH: Does it actually matter in this case, because I had a quick look through

29 the schedule, and tell me if I have got this wrong, but what the defendant seems to

30 have done is they have placed a value at £917.00, which was based on the items of

31 disrepair they agree, but ignored all the items which they think do not fall within

32 disrepair, but if you add the figures that they have put on that we get, and I think I got,

33 and doing some very quick maths roughly around £1,600, including VAT. Have I got

34 that right?

35 MR LEE: That's where I was going, Your Honour.

1 JUDGE WALSH: Yes.

2 MR LEE: In this particular case, I submit it doesn't matter whether you look at the-

3 JUDGE WALSH: Right.

4 MR LEE: - defendant's or the claimant's, but for reasons-

5 JUDGE WALSH: Either way, it is not floating around the £1,000.

6 MR LEE: Exactly.

7 JUDGE WALSH: Right.

8 MR LEE: And that's where paragraph seven at *Birmingham City Council v Lee* comes in

9 because-

10 JUDGE WALSH: What page am I on?

11 MR LEE: 84.

12 JUDGE WALSH: Okay. Sorry, paragraph?

13 MR LEE: Seven.

14 **Pause.**

15 JUDGE WALSH: Yes.

16 MR LEE: Yes. So the Court of Appeal has given a very clear direction on that. There is a

17 clear policy reason for adopting this particular approach in housing conditions claims

18 as well, because one looks at paragraph 11 of the pre-action protocol, which is

19 reproduced at page 216 of the appeal bundle-

20 **Pause.**

21 JUDGE WALSH: Yes.

22 MR LEE: - which effectively says if a tenant's claim is justified and settled, it should be

23 settled on terms that the landlord pays costs.

24 JUDGE WALSH: Okay.

25 MR LEE: One also looks at what the Court of Appeal said in *Birmingham v Lee* at 15 and

26 16 – paragraphs 15 and 16, which is pages five and six.

27 **Pause.**

28 JUDGE WALSH: Okay. Sorry, what was your point in relation to these two paragraphs?

29 MR LEE: Just that it underpins the policy decision or the policy reasons why the housing

30 district procedure is set up in the way that it is-

31 JUDGE WALSH: Right.

32 MR LEE: - in my submission.

33 JUDGE WALSH: Yes, so you are saying *Birmingham v Lee* has a strong policy decision

34 behind it due to the fact that a litigant in person may not always be legally represented.

35 If it is always a small claim, they cannot get representation. Is that the point?

1 MR LEE: Exactly. Exactly, Your Honour.

2 JUDGE WALSH: Okay. Yes.

3 MR LEE: So I go back to my starting position. The judge failed to follow such an approach
4 to allocation in that he didn't identify the normal track based on value and thereafter
5 proceed to consider 26.13(1) factors to consider whether the starting point should
6 indeed be the end place of travel.

7 JUDGE WALSH: Yes. So you are saying he should have identified that this was a fast
8 track, then looked at the 26.13 factors to consider whether he should move away from
9 that.

10 MR LEE: Indeed.

11 JUDGE WALSH: Yes.

12 MR LEE: And now that feeds into ground two and certainly in the way that the district judge
13 dealt with his assessment of general damages. Now, in his decision, he deals with
14 general damages at paragraph two, towards the end, page 44 of the appeal bundle.

15 JUDGE WALSH: Yes.

16 MR LEE: He says, "It looks a little bit unlikely that the claim for general damages could
17 exceed £1,000 and is one of those cases that I think could fall either way." Now,
18 clearly the district judge was operating in a very pressured, busy list, but in my
19 submission, that sentence is entirely inconsistent. How can it be unlikely that
20 something is going to happen, but then it is one of those cases that could go either
21 way? In my submission, that's a contradiction in terms, but two points arise.
22 Given the claimant/appellant's pleaded claim is based on her saying that the defendant
23 has been on notice of issues that she complains of now since September/October 2021
24 at the earliest, and the landlord, the Leeds District Council were definitely on notice in
25 August 2024 because that's when they received the letter of claim, in my submission,
26 the judge was wrong to conclude that it looked a little bit unlikely that the claim for
27 general damages could exceed £1,000. In actual fact, it must have been very likely,
28 based on the *Wallace v Manchester City Council* guidelines, that there is a realistic
29 prospect that the claimant would recover a sum well in excess of the £1,000 threshold.

30 JUDGE WALSH: Yes.

31 MR LEE: And that's a point that HHJ Freedman made in *Fishwick & Gentoo Group*
32 *Limited*, page 41 of the authorities bundle, because the district judge, in that case, fell
33 into the same error as Judge Joslin.

34 JUDGE WALSH: Sorry, what paragraph?

35 MR LEE: 14 and 15.

1 **Pause.**

2 JUDGE WALSH: Yes. Sorry, I have read up to 17. Is that right? Yes. It is very fact-
3 specific, is it not?

4 MR LEE: It is, but just by chance the pleaded claim in this case, or certainly for value
5 purposes, is on all fours with the position in *Fishwick*. It's £1,000 to £5,000; it's £1,000
6 to £5,000 in this case, and there or thereabout the timeline marries up too because in
7 that case it was based on a four-year period.

8 JUDGE WALSH: But the factual matrix is important, the same as it is in repair, because if
9 you say, well, look at the claimant's repair, the bill is £5,000, and they are claiming
10 the cost of a tap at £3,000, well, that would just be ridiculous, right? So, is it not a
11 similar analogy with general damages where you just look at the factors in each
12 individual case?

13 MR LEE: Yes.

14 JUDGE WALSH: I am not quite sure how this helps me, this bit of the judgment you are
15 taking me to.

16 MR LEE: And what I say, judge - Your Honour, sorry, it helps insofar as the judge hasn't,
17 when assessing the general damages, as being unlikely to be worth £1,000-

18 JUDGE WALSH: Yes.

19 MR LEE: - and my submission is he's clearly done so not having regard to how general
20 damages in claims of this nature are valued because ultimately if a four/five-year
21 period is being complained of one only needs to seek an award north of £200 per
22 annum for the £1,000 threshold to be reached.

23 JUDGE WALSH: What is the period here, did you ...

24 MR LEE: The period here complained of is September and October 2021, and then there's
25 various - there's a multitude of other complaints set out in the particulars in the
26 intervening period between September/October 2021 and August 2024 when the letter
27 of claim was received.

28 JUDGE WALSH: Yes. Okay.

29 MR LEE: Even based on a, for example, a modest 10% rental reduction, which is where the
30 *Wallace v Manchester City Council* sort of case comes in because that talked about
31 notional rental reductions, even on 10% - I haven't got the specific rental payment,
32 that is not in my instructions, but one can easily understand that over a four and a half
33 year period they would pay more than £10,000 in rent.

34 JUDGE WALSH: Yes. Okay.

35 MR LEE: So, moving on from that, to the extent that you find that the judge did indeed

1 follow the two-stage approach he has just not articulated it very well in his judgment,
2 he, in my submission, erred in applying this two-stage approach placing too much
3 emphasis on stage two and his assessment that the claimant's claim, in general terms,
4 seems to be towards the lower end of the spectrum and was one of those housing
5 disrepair claims that probably falls on the small claims track. This is where
6 Practice Direction 26, paragraph 16.1 comes in. The clear guidance is that if the
7 normal track for the claimant is a fast track, then the Court will allocate to the fast
8 track unless it is unjust to do so-

9 JUDGE WALSH: Yes.

10 MR LEE: - and when a back selection is phrased in mandatory terms, it isn't followed. Yes,
11 it's not a rule, but it has the force of law when it's raised in mandatory terms.

12 **Pause.**

13 JUDGE WALSH: Yes.

14 MR LEE: This then picks up on where Your Honour identified the potential for when you
15 were considering this, i.e. when he stepped back, he failed to provide any adequate
16 reasoning as to why it was unjust to allocate the claimant through the fast track. As I
17 say, that's probably because he didn't do the first stage properly and he didn't identify
18 the normal track of the claim.

19 **Pause.**

20 MR LEE: Actually, when one goes through 26.13(1), in my submission, the factors don't
21 really assist the Court very much because, aside from value, which points towards the
22 normal track-

23 JUDGE WALSH: Yes.

24 MR LEE: - all of the other factors, in my submission, are neutral. The fact is this isn't the
25 most complex of claims, but nor is any other housing conditions claim for which the
26 normal track is the fast track. That's a point that was made by HHJ Owen in *Matthews*.
27 If you will forgive me, I've not specifically earmarked this. I'll just find it.

28 JUDGE WALSH: Yes.

29 **Pause.**

30 JUDGE WALSH: It is not a complex claim, but there are a number of items of disrepair
31 that are claimed. I cannot remember how many there were, but there were an awful
32 lot of them.

33 MR LEE: Oh, there's an awful lot, yes, but there's also going to be, when one looks at the
34 pleadings, there's going to be dispute as to notice, there's going to be dispute in relation
35 to access, there is going to be dispute in relation to what constitutes [actioned or

1 sectional disrepair?]-

2 JUDGE WALSH: Yes.

3 MR LEE: - so when I say it's not a complex claim, it's not simple either. I have found the

4 reference; it's paragraph 52. HHJ Owen's decision at page 37 of the authorities bundle.

5 **Pause.**

6 JUDGE WALSH: Yes. So you are saying this was always a fast track and there are no

7 factors – that would point away from it being a fast track.

8 MR LEE: Indeed. To summarise everything, the clay structure of the protocol and the

9 allocation rule in housing conditions claims-

10 JUDGE WALSH: Yes.

11 MR LEE: - is set up so if a claim is a justified claim which ought to be on a fast track, then

12 costs should follow.

13 JUDGE WALSH: Yes.

14 MR LEE: In a case like this where the normal track, in my submission, is the fast track, if

15 the claim is justifiable, it would be quite unjustifiable to allocate the matter to the small

16 claims and therefore remove the potential recovery of costs which is contemplated by

17 the pre-action protocol itself and indeed the Court of Appeal in *Birmingham City*

18 *Council v Lee*.

19 JUDGE WALSH: Okay.

20 MR LEE: Your Honour, if there is anything else I can assist you with, otherwise those are

21 the appellant's [inaudible].

22 JUDGE WALSH: I do not think so. That is very helpful. Thank you, Mr Lee.

23 MR LEE: Thank you.

24 JUDGE WALSH: Mr Rafferty.

25 MR RAFFERTY: Your Honour, Your Honour has my skeleton argument.

26 JUDGE WALSH: I do.

27 MR RAFFERTY: Does Your Honour mind if I remain seated as well?

28 JUDGE WALSH: No, of course. No.

29 MR RAFFERTY: I'll keep my submissions very brief.

30 JUDGE WALSH: Thank you.

31 MR RAFFERTY: Your Honour, I say on behalf of the respondent that the central difficulty-

32 JUDGE WALSH: Yes.

33 MR RAFFERTY: - for the appellant is that there is no error identified here. The appeal is,

34 in essence, that the appellant suggests that Judge Joslin was bound to agree with the

35 appellant. That's an exercise of the judge's discretion. That's an exercise of his value

1 in decision-making, don't you think, rather than any specific errors that the judge
2 committed in allocating this case. What Judge Joslin had brought him was a range of
3 evidence, much of it competing, as is always the case in these matters.

4 JUDGE WALSH: Yes.

5 MR RAFFERTY: He had repair works valued at just over £2,000 on behalf of the appellant,
6 at under £1,000 on behalf of the respondent. He heard submissions on these competing
7 positions from both counsel, and then he conducted his evaluation, and I will just quote
8 a little bit from Judge Joslin: "probably in the region of £1,000. It looks a little bit
9 unlikely that the general damages would exceed £1,000. It is a matter which could fall
10 either way; it's on the cusp." These are all indications that Judge Joslin was carrying
11 out an evaluation of the evidence that's before him, and Your Honour can see what
12 evidence he had. My learned friend has addressed various points, and forgive me if I
13 am misunderstanding, but the appellant's central argument is that Judge Joslin did not
14 identify what the normal track was; he didn't follow the structured approach-

15 JUDGE WALSH: Yes.

16 MR RAFFERTY: - under 26.9. I say that must be wrong. He identifies the repair costs.
17 He identifies what he considers the general damages would be, and he identifies the
18 threshold of £1,000. That is the evaluation exercise under 26.9 in determining what
19 the normal track is, aside from confirming that there is specific performance in the
20 case, and Judge Joslin touches on all of those points. I make no bones about it,
21 Judge Joslin's judgment is concise, but it doesn't need to be atoned. It is a
22 bog-standard allocation. He had one of likely many on his list that day. He has looked
23 at all of the evidence that was available and arrived at his conclusion. Now, in relation
24 to the repair costs, this is something HHJ Gargan touches on in his order at paragraph
25 seven.

26 JUDGE WALSH: What page is it?

27 MR RAFFERTY: Page 32, Your Honour.

28 JUDGE WALSH: Thank you.

29 MR RAFFERTY: I'll give Your Honour a moment to read that judgment.

30 **Pause.**

31 JUDGE WALSH: Yes.

32 MR RAFFERTY: And the point is made there. I think Judge Joslin plainly agrees, and there
33 is nothing to say that no other judge would make the same decision. It's not an
34 irrational decision. In fact, I would respectfully submit it's the right decision in this
35 case, and again, Judge Joslin looked at the evidence and arrived at a considered

1 evaluation. When looking at the general damages, Your Honour may conclude that
2 Your Honour would have done something differently. There is a long period of notice,
3 taking the claim at its highest, of course, but again, as HHJ Gargan notes at paragraph
4 eight, general damages are likely to be very modest in this case. This is not a disrepair
5 claim which is at the higher end of the spectrum, and, in fact, Judge Joslin identifies
6 that. He says it is toward the lower end of the spectrum.

7 He doesn't arrive at a final evaluation; he is not required to. He is not conducting a
8 trial. He is not hearing live evidence. He doesn't even have the witness statements at
9 this point. He arrives at a broad-brush decision on what he thinks the damages are
10 likely to be, and he may be wrong ultimately, but he is not wrong to make that
11 judgment at this stage. To say otherwise is to put far too high a burden on the judge
12 at that stage.

13 Therefore, looking at the threshold for both repair costs and general damages,
14 Judge Joslin has identified the normal track under Rule 26.9. He hasn't perhaps
15 expressly said so in his judgment, but that's plainly what he did. He hasn't made a
16 mistake in following the structured approach. He therefore doesn't need to consider
17 the practice direction in relation to it being unjust to be on the fast track because he
18 has determined that the normal track is the small claims track.

19 Touching on the point made by Your Honour in relation to 26.13-

20 JUDGE WALSH: Yes.

21 MR RAFFERTY: - again, it's right, Judge Joslin doesn't expressly reference Rule 26.13 in
22 his judgment. However, he ultimately concludes that, "standing back, looking at the
23 claim as a whole, it sits towards the lower end of the housing disrepair spectrum."
24 Now, I say respectfully, that is the ultimate result of applying the factors under
25 Rule 26.13 to determine where on the spectrum this type of case sits. These are all
26 matters relevant to allocation.

27 He is not required to go through each one in turn specifically and say this is that, this
28 is this, this is that, but he does reference it in very broad terms by doing the holistic
29 standing back exercise and taking a broad judgment. My learned friend, I entirely
30 understand what he says, that this is perhaps not the most complex claim, but that the
31 factors are neutral. I respectfully disagree with that because none of the factors under
32 Rule 26.13 in this case distinguish it from any other disrepair claim.

33 There is nothing to say that this is more complicated. What that means is if this is not
34 a simple claim, then there is no such thing as a simple claim in housing disrepair, which
35 would render 26.13 completely redundant, and that simply can't be right. What the

1 Court will look at is the factors and apply them, and in this case, applying the factors
2 to this case, they are all indicative that this is a very straightforward case.

3 So, in summary, Your Honour, I say Judge Joslin considered the competing valuation
4 evidence, which is required under 26.9. He considered the repair costs. He considered
5 the damage's position. He recognised it was close to the line, and he arrived at a
6 judgment based on the documents he had and the submissions he had. He exercised
7 his discretion, and he then went on to take a step back and, in doing so, satisfied
8 Rule 26.13.

9 The appellant has a very high bar, and he hasn't come close, in my respectful
10 submission, to satisfying it. That another judge may have made a different decision,
11 of course, is irrelevant. There is no error here, and I would invite Your Honour to
12 dismiss the appeal.

13 JUDGE WALSH: Thank you very much. Anything in reply that you have not already
14 covered?

15 MR LEE: Just the one point in relation to the interplay between 26.9(1)(b) and 26.13 arising
16 out of what my learned friend has just said. I just direct your attention, judge, to 26.9.2
17 in the commentary.

18 JUDGE WALSH: Just give me a second.

19 **Pause.**

20 JUDGE WALSH: In the footnotes, are you talking?

21 MR LEE: Yes, in the commentary to the *White Book*.

22 JUDGE WALSH: Yes, so which part?

23 MR LEE: 26.9.2 and it's the very – it's the end paragraph.

24 JUDGE WALSH: Right.

25 **Pause.**

26 MR LEE: And it links back to the point of discretion. Yes, of course, allocation is a case
27 management decision, but in housing conditions claims the way that the rules operate
28 actually, in my submission, the discretion was actually narrow, and that was a point
29 that was canvassed and accepted in the *Matthews v Nottingham City Council* judgment
30 by HHJ Owen. So it isn't a wide or encompassing discretion such as you would
31 normally find a judge exercising at a case management stage or in relation to costs,
32 maybe. It's a very narrow discretion operating within the ambit of 26.9(1)9(b).

33 JUDGE WALSH: Yes.

34 MR LEE: Thank you.

35 JUDGE WALSH: Thank you. Okay, I am going to take a little bit of time to think about

1 this just to – I am going to read the authorities again, have a look at the *White Book*
2 and have a look about the relevant parts of the bundle. I am going to take an hour, so
3 my plan is to give judgment at half twelve. If I need a little bit more time, the learned
4 clerk will let you know, but I will try and get you out of here by one o'clock. Okay.

5 MR LEE: Thank you, Your Honour.

6 MR RAFFERTY: Thank you.

7 **Court adjourns.**

8 **Court resumes.**

9 JUDGE WALSH: Apologies for keeping you waiting. So slightly later than advertised. I
10 have read all the authorities, and particularly *Birmingham and Lee*, and your point
11 about the policy. Can I just – something I have not checked: the hearing where the
12 judge allocated this to the small claim, was it listed as an allocation hearing?

13 MR LEE: I believe so.

14 JUDGE WALSH: There was no application. Was it just an allocation and directions, was
15 it?

16 MR LEE: Yes, I believe so, Your Honour.

17 JUDGE WALSH: Yes, okay. Thank you.

18 **Judgment transcribed separately.**

19 JUDGE WALSH: Mr Lee.

20 MR LEE: Your Honour, thank you. The only thing to deal with then is to set aside the
21 original allocation order and deal with the directions.

22 JUDGE WALSH: Yes. So I will be giving you carriage of the order, Mr Lee, as well. So,
23 just so you are aware now. What is it you are seeking then?

24 MR LEE: So, we can set aside the order-

25 JUDGE WALSH: Yes.

26 MR LEE: - of Judge Joslin, allocation to the fast track and then standard fast track directions
27 that I am sure my learned friend and I can agree.

28 JUDGE WALSH: Mr Rafferty.

29 MR RAFFERTY: Seems [inaudible].

30 JUDGE WALSH: Thank you very much. Anything else?

31 MR LEE: In addition, I seek costs of the appeal.

32 JUDGE WALSH: Have you filed – I have not seen the schedules. Has it been filed?

33 MR LEE: Yes, a schedule was filed and served a number of days ago.

34 JUDGE WALSH: Mr Rafferty, do you have it?

35 MR RAFFERTY: I have seen the schedule.

1 JUDGE WALSH: Anything in principle you object to?

2 MR RAFFERTY: No.

3 JUDGE WALSH: No. So do you have a copy of the schedule you can hand to me?

4 MR LEE: I have a copy I could email to Your Honour if possible, or I could just send it to

5 your clerk.

6 JUDGE WALSH: Right. Mr Rafferty, is there a great deal of objection to the quantum?

7 MR RAFFERTY: [Inaudible] Your Honour, I think quantum comes to nearly £17,000.

8 JUDGE WALSH: Right.

9 MR RAFFERTY: Yes.

10 JUDGE WALSH: I had better get my laptop. Do you have my email address?

11 MR LEE: I don't, Your Honour.

12 JUDGE WALSH: My learned clerk – Rosie, do you have my email? Could you just pass it

13 to counsel, please?

14 **Pause.**

15 MR LEE: It should be on its way, Your Honour.

16 JUDGE WALSH: Thank you. Can you pass on to those instructing you that if they want

17 their costs of a hearing on the next occasion, they will bring a paper copy as well.

18 **Pause.**

19 JUDGE WALSH: Mr Rafferty, also, if you could just – I mean, I am grateful for you digging

20 in and doing the written argument, and it was a very well-written argument as normal,

21 but it is frustrating receiving them on the morning-

22 MR RAFFERTY: Of course.

23 JUDGE WALSH: - and it was Judge Gargan did the order [inaudible]. I am going to start

24 putting on less orders in these, in essence, then if you do not file them in time, you will

25 not be heard on the appeal.

26 MR RAFFERTY: [Inaudible].

27 JUDGE WALSH: Thank you. I will close it down and see if that helps get it through

28 quicker.

29 **Pause.**

30 JUDGE WALSH: Here we go. Okay.

31 **Pause.**

32 JUDGE WALSH: £360 Grade A. What is Grade A here now?

33 MR RAFFERTY: It is National 2, which is £288, Your Honour.

34 JUDGE WALSH: Sorry, two eight?

35 MR RAFFERTY: Eight.

1 MR LEE: I don't think there is very much difference between National 2 and National 1
2 now anyway, is there?

3 JUDGE WALSH: Right.

4 MR RAFFERTY: National 1 is £295.

5 JUDGE WALSH: Okay.

6 **Pause.**

7 JUDGE WALSH: What happened in the April hearing? Why was it vacated?

8 MR LEE: It was vacated the day before due to lack of judicial availability, so in essence,
9 Your Honour, I was going to raise that everything had been done in readiness for the
10 hearing, so when Mr Smith was stood down, he did charge a fee which is half, I think,
11 of what his fee ordinarily would have been.

12 JUDGE WALSH: Okay, if he can, I will hear from Mr Rafferty first, and I will come back
13 to you if need be.

14 MR RAFFERTY: Your Honour, I will keep my submissions very brief.

15 JUDGE WALSH: Yes.

16 MR RAFFERTY: This is obviously a broad-brush assessment on a summary basis.
17 Your Honour has identified the hourly rate as being far too high. Grade A is £360
18 rather than £288, which is the guideline hourly rate. Nothing to suggest it should be
19 higher than the guidelines. In terms of the attendances, nothing particularly stands out,
20 Your Honour, and I don't think that's worth the costs that are racked up here.

21 JUDGE WALSH: Okay.

22 MR RAFFERTY: They are racked up in the schedule. Your Honour may be familiar with
23 schedules of this nature. They are granulated to the extreme, which makes it very
24 difficult for Your Honour to assess. There are 54 items in this schedule, which comes
25 to over £6,500. It is difficult to identify what work is being undertaken because there
26 are numerous entries that appear to overlap and numerous entries which are incredibly
27 vague. There is plenty of considering the current position, which is difficult to pin
28 down in terms of what actual work is being undertaken by considering the current
29 position.

30 JUDGE WALSH: Yes.

31 MR RAFFERTY: In terms of the drafting and the documents, the work undertaken should
32 be relatively modest. This is a straightforward appeal on a case management decision.
33 We don't compare schedules, save that it provides some broad framework. If the
34 respondents had been successful, then the statement of costs would have totalled under
35 £5,500. There is a significant difference.

1 JUDGE WALSH: What are the profit costs on that – on the defendant – sorry, respondent?

2 MR RAFFERTY: On the respondent's schedule, Your Honour, the profit costs are

3 £2,978.50 to take out of that.

4 JUDGE WALSH: Okay. Anything about disbursements, concluding counsel's fees?

5 MR RAFFERTY: Your Honour, now, I won't make any submissions on those.

6 JUDGE WALSH: Right. That is helpful. Thank you.

7 MR LEE: Yes, Your Honour. I am not going to seek to try and persuade you that the

8 guideline hourly rate shouldn't apply. We have got the Court of Appeal decision in

9 *Samsung*, which says if you don't want guidelines you need to provide a good reason

10 as to why the Court should depart from the non-summary assessment and-

11 JUDGE WALSH: Should this even be a Grade A? It is a straightforward appeal.

12 MR LEE: Well, Your Honour, if we look actually at the level of work undertaken by the

13 Grade A-

14 JUDGE WALSH: Yes.

15 MR LEE: - it is fairly minimal. It isn't huge, in any event.

16 JUDGE WALSH: Okay.

17 MR LEE: The initial decision as to whether to appeal or not was taken by the Grade A, but

18 it's Ms Butler's firm. I say that that's not unreasonable, but then once that was done,

19 the work has actually been done by Grade C and D fee earners with her supervision.

20 So if we actually look at it, not a lot has been done by an A. Having said that, the

21 Grade C and D rates are still above guidelines, so there will need to be some adjustment

22 to take that into account.

23 JUDGE WALSH: Yes.

24 MR LEE: I think you are looking at maybe 25 to 30% above the guideline at £184 and £194.

25 JUDGE WALSH: Yes.

26 MR LEE: [Inaudible] pushed on the attendances.

27 JUDGE WALSH: So if that is right, you are basically saying that the profit costs at the

28 correct guideline would probably be about £5,800.

29 MR LEE: £8,264. So 25 – probably around £6,000.

30 JUDGE WALSH: So, £6,000. Okay.

31 MR LEE: Yes.

32 JUDGE WALSH: So, at the correct rate, your claim is £6,000 on the profit costs. Yes.

33 Okay, is there anything you want to say anymore in support of that £6,000?

34 MR LEE: Well, Your Honour, it certainly refers to the vacated or aborted appeal hearing

35 that did have to have some kind of [inaudible], but yes, it's been re-used to an extent,

1 you could say, but nonetheless costs were incurred, and through no fault of anyone the
2 hearing couldn't go ahead. Further, obviously, this is the appellant's appeal. They
3 have done all of the running-

4 JUDGE WALSH: Yes.

5 MR LEE: - and therefore comparing a £6,000 figure with a £3,000 figure is comparing
6 apples and oranges, in my submission. It's not a like-for-like.

7 JUDGE WALSH: Yes.

8 MR LEE: On a broad-brush basis and doing the best that one can, I say, Your Honour, a
9 figure for profit costs of around £5,000 plus VAT and then plus disbursements would
10 be a suitable amount.

11 JUDGE WALSH: Thank you very much. Well, taking into account the corrected starting
12 point of around £6,000 for profit costs plus disbursements, taking into account that this
13 is, in my view, one of the most straightforward appeals you could have in relation to
14 an appeal against allocation, I take the view, in the round, that I would expect profit
15 costs to be in the region of £4,250. On top of that, there is no objection to any of the
16 disbursements plus counsel's fees and VAT, so if somebody has a calculator and can
17 do those mental gymnastics, I would be grateful.

18 MR RAFFERTY: I'm sure my learned friend will correct me. I make disbursements to be
19 £6,946. Those are the counsel fees plus VAT plus the appeal fee. If one then adds
20 £4,250 to that, I make it £11,196.

21 MR LEE: Have you added VAT to the profit?

22 MR RAFFERTY: Forgive me, Your Honour, is it £4,250 plus VAT?

23 JUDGE WALSH: £4,250 plus VAT, yes.

24 MR RAFFERTY: Forgive me.

25 **Pause.**

26 MR RAFFERTY: So it's £5,100 plus £6,946. I make that £12,046.

27 JUDGE WALSH: £12,046 global. I will just wait for Mr Lee.

28 MR LEE: Yes, judge, that sounds right, so if I just double-check it, if that's okay.

29 JUDGE WALSH: Yes.

30 MR RAFFERTY: I appreciate Your Honour's well into the two-hour lunch now. I am more
31 than happy to [inaudible].

32 MR LEE: Yes, absolutely.

33 JUDGE WALSH: Yes, well, that is very helpful. Thank you very much. Again, thank you
34 very much to both of you. Mr Lee, have you – I know Mr Rafferty well. Have you
35 appeared before me before?

1 MR LEE: I don't think I have, Your Honour.

2 JUDGE WALSH: Where have you come from?

3 MR LEE: [Inaudible]. St Helen's.

4 JUDGE WALSH: I could pick up the accent just about, but what chambers are you at?

5 MR LEE: I opened my own chambers about three years ago.

6 JUDGE WALSH: Oh, right. Okay, how is that going?

7 MR LEE: Yes, it has its challenges, but it's a very different chambers. A traditional model

8 as well.

9 JUDGE WALSH: Okay.

10 MR LEE: For a start, it's regulated by the SRA, not the BSB.

11 JUDGE WALSH: Oh, right.

12 MR LEE: And all of the members are employed as opposed to being a collective of self-

13 employed, so we are a lot different to anything else in the market, but I suppose that's

14 what makes the world such a ...

15 JUDGE WALSH: So how do you find being regulated by the SRA instead?

16 MR LEE: To be honest, because we don't generally do what a conventional law firm does

17 in terms of case managing and stuff like that, the SRA leaves us alone.

18 JUDGE WALSH: Well, when I was at the bar, that was our view of the SRA. They tend to

19 leave solicitors alone, and the BSB are all over us for everything, so that was our view.

20 MR LEE: So I'm regulated by both, so ...

21 JUDGE WALSH: Oh, you are regulated by both. Yes.

22 MR LEE: Yes. Yes.

23 JUDGE WALSH: Okay, well, you are in the best position to judge. So what call are you?

24 MR LEE: 2009.

25 JUDGE WALSH: Okay, so it is a brave call going on your own that early. Yes. I am glad

26 it is working out for you anyway.

27 MR LEE: So far it's working out. Fingers crossed it continues.

28 JUDGE WALSH: Mr Rafferty, congratulations on your appointment.

29 MR RAFFERTY: No, Your Honour, all down to Your Honour. I am so grateful for your

30 assistance.

31 JUDGE WALSH: Is it a civil ticket you have got?

32 MR RAFFERTY: No, it's not. There was only one civil in the whole country. It's in London.

33 JUDGE WALSH: Oh, wow.

34 MR RAFFERTY: So they've stuck me in the Crown Court.

35 JUDGE WALSH: Yes, most people tend to end up enjoying it. It is not easy, crime

1 anymore-

2 MR RAFFERTY: No.

3 JUDGE WALSH: - because there is an – I did crime 20-odd years ago, but I am not sure I

4 would fancy it now. Although we have some of that quasi-criminal breach of

5 injunction sentencing, it is very simple compared to what you have to do up there.

6 MR RAFFERTY: Yes. No, I'd be lying if I said I wasn't a bit nervous about it.

7 JUDGE WALSH: Yes, but that is understandable.

8 MR RAFFERTY: Keep your eyes on the front pages.

9 JUDGE WALSH: Yes, judge sends man down for 25 years for parking ticket, but I know –

10 I mean, Anesh – sorry, HHJ Pema, he loves the crime element there because he was a

11 Recorder before he became a CJA in crime. Look at it this way: you did not get

12 family.

13 MR RAFFERTY: Yes.

14 JUDGE WALSH: So, all right. Thank you, gentlemen.

15 MR RAFFERTY: Thank you.

16 **Court rises.**

17 **End of hearing.**

18

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291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com

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