



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **CHI/18UC/LIS/2019/0037**

**Property** : **48, Julius House, New North Road,  
Exeter, Devon EX4 4HG**

**Applicant** : **Trinity (Estates) Property  
Management Limited**

**Representative** : **Highline Solicitors Limited**

**Respondent** : **Mr Daniel Henry Densham**

**Representative** :

**Type of application** : **Transferred Proceedings from  
Exeter County Court in relation to  
service and administration  
charges, interest and costs**

**Tribunal member(s)** : **Judge D. Agnew**

**Date of decision** : **21 August 2020**

---

**FURTHER DIRECTIONS AND  
DETERMINATION**

---

### **Further Directions**

1. On 14<sup>th</sup> July 2020 I directed that unless the Respondent served his statement of case in response to the Applicant's case by 31<sup>st</sup> July 2020 he was liable to be debarred from taking further part in the Tribunal proceedings to determine the payability and reasonableness of service charges and administration charges claimed by the Applicant management company in respect of the Respondent's flat at 48 Julius House, New North Road, Exeter EX4 4HG ("the Property").
2. The Respondent has failed to serve such a statement of case but instead expended his energies in attempting, unsuccessfully, to challenge my decision of 4<sup>th</sup> May 2020 as to the validity of the lease under which the said service and administration charges arise.
3. Consequently, the Respondent has failed to comply with directions of the Tribunal and is therefore hereby debarred from taking further part in the determination sought by the Applicant.
4. As the Applicant has filed a full statement of case I will now proceed to determine the application on the basis of a paper determination without a hearing under Rule 31 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

### **Determination**

5. Notwithstanding that the Respondent has been debarred it is still necessary for the Tribunal to be satisfied that the service and administration charges claimed have been reasonably incurred and are reasonable in amount. It is to be noted that the Respondent has never claimed otherwise. His defence to the County Court proceedings was solely on the basis that he had never entered into the lease and has been stated above despite opportunities since the ruling as to the validity of the lease to say which specific items of service and administration charges he challenges he has failed to do so. The Tribunal must conclude, therefore, that there are no such specific charges that he challenges.
6. The service and administration charges claimed by the County Court claim form and Particulars of Claim amounting to £4588.59 plus interest and costs are as follows.

2016: balancing charge of £18.58

2017: £1429 less credits of £224.01 leaving balance of £1205.77

2018: £1526.55 plus administration charge of £150

2019: £1687.69

The above total £4588.59 which was the amount claimed. There has, however, since been applied a credit of £100.19 to the 2019 figure

making the total claim under the County Court proceedings of £4488.40 plus interest and costs. The interest and costs is a matter for the County Court rather than the Tribunal and therefore will be dealt with separately.

7. Since the proceedings were issued an on-account demand of £1797.84 fell due on 1<sup>st</sup> January 2020. Although this does not form part of the County Court case that was transferred to the Tribunal the Applicant seeks a determination of the Tribunal in respect of that demand. It is sensible for this to be included as it will preclude the need for a further application incurring further costs and the Respondent has had the opportunity of challenging that demand but has not done so. Any such determination from the Tribunal will not form part of the County Court order I make but will be enforceable through the County Court in the usual way.
8. I have seen the service charge accounts for 2017 and 2018. The accounts for 2019 had not been finalised when the Applicant served their statement of case so the charges sought for 2019 are on-account charges based on the budget for that year. The same is the case for 2020. I have seen the service charge statement of account specific for the Property. I have also seen the service charge demands and am satisfied that all the statutory requirements have been complied with in respect of those demands. The accounts are detailed and have been certified by a firm of chartered accountants. The budget statements follow a similar format and are broken down into individual headings of expenditure and the reserve and sinking funds are shown separately. The accounts also show the contributions received and liability for expenditure in respect of the parking part of the development from other occupiers of the development. The budgets show the percentage of the overall budget for which the Respondent individually is responsible, namely 0.44% of the residential budget costs and 0.6329% of the “residential parking” costs.

The lease

9. The lease is a tri-partite lease dated 18 July 2006 made between Bellway Homes Limited (1) Trinity (Estates) Property Management Limited (2) and the Respondent (3). It is for a term of 125 years from 1<sup>st</sup> January 2005 and was granted for a premium of £193,000. The development of which the Respondent’s flat forms part is a mixed development of apartments, shops and offices. The service costs are divided into Estate Costs, Block Costs, Private Parking Costs and Lift Costs. In addition to his flat the Respondent is given the right to the exclusive use of one allocated car parking space.
10. By clause 2B of the lease the Respondent covenanted to pay the service charge in accordance with the Twelfth Schedule to the lease. At clause 10(i) of the lease there is the usual forfeiture clause in default of payment of service charge. This clause also provides for interest to be paid on outstanding service charges of more than 21 days at the rate of

10% per annum or 2% above Barclays bank base rate whichever is higher.

11. By paragraph 33(c) of Part II of the Sixth Schedule the Respondent covenants to pay “all costs charges and expenses incurred by the Management Company in connection with the recovery of arrears of the Rent and Service Charge”.
12. By paragraph 38 of part II of the Sixth Schedule, the lessee covenants to “pay the Management Company the rent secondly reserved (the Service Charge) at the times and in the manner specified in the Twelfth Schedule”. This provides for the management Company to estimate costs for the ensuing year based on actual costs for the previous year. The lessee is then required to pay those estimated costs by twelve payments during the year at least one month apart, and as soon as practicable after the end of the year the Service Charge shall be ascertained and certified by an independent qualified accountant. The lessee is then required to pay any shortfall. Any surplus of payments over costs is credited to the lessee’s service charge account.

### **The determination**

13. Without any specific challenge from the Respondent to any particular item of expenditure set out in the accounts or the budgets I have no reason to doubt whether the expenditure claimed has been reasonably incurred or is reasonable in amount. On the face of it, the accounts have been properly prepared, they contain all the relevant detail one would expect and the amount charged for an annual service charge to include buildings insurance does not seem to be unreasonable bearing in mind the type of development in which the Respondent’s flat is contained. The costs have risen steadily over the years but not to an extent that would be beyond what might be expected and the two budgets have been broadly in line with expenditure in previous years.
14. I therefore determine that the service charges as claimed are payable by the Respondent. There is one administration charge of £150 for referring the recovery of the charges to solicitors. That is not an unreasonable fee for the Respondent to have to pay for the work involved in fully instructing solicitors. I therefore determine that that too is a reasonable charge and is payable by the Respondent. The charges for 2017, 2018 and 2019 totalling £4488.40 including the £150 administration charge will be the subject of a County Court Order that will accompany this decision. The on-account charge for £1797.84 cannot be included in the County Court Order but it is determined by the Tribunal as reasonable and, on application, can be converted into a County Court judgment.

Dated the 21<sup>st</sup> August 2020

Judge D. Agnew.

## Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking