



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

**Case Reference** : **MAN/00EW/LAC/2021/0005**

**Property** : **5 Naylor Road, Rivacre Village, Ellesmere Port, Cheshire, CH66 1DS**

**Applicant** : **Mr Paul Victor Williams**

**Respondents** : **(1) Bellway Homes Limited**  
**(2) Mainstay Residential Limited**

**Type of Application** : **Administration Charges, Commonhold and Leasehold Reform Act 2002, Paragraph 5 and 5A of schedule 11 and section 20C of the Landlord and Tenant Act 1985.**

**Tribunal Members** : **Judge C. P. Tonge, LLB, BA.**  
**Mr A. Hossain, BSc, MRICS.**

**Date of Decision** : **19 April 2022**

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**DECISION**

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## **Application and background**

1. This case comes before the Tribunal by means of an application dated 25 March 2021. Mr Paul Victor Williams, “the Applicant” challenges a series of administration charges as detailed in a demand for payment from Mainstay Residential Limited, dated 3 June 2021, in the total sum of £1,506.78.
2. “The Respondents” are (1) Bellway Homes Limited who is the Landlord of the property and (2) Mainstay Residential Limited, who are management agents for the property.
3. The Applicant holds “the property”, 5 Naylor Road, Rivacre Village, Ellesmere Port, Cheshire, CH66 1DS, on the remainder of a 150 year lease that commenced on 1 January 2006, purchased by the Applicant on 22 June 2007.
4. Judge Holbrook issued Directions, dated 8 July 2021 and sent to the Parties on the same date, in which it is states that the Tribunal considers this case to be one in which a hearing is not necessary. Direction 1 deals with the provision of financial information by the Respondents and provides for this to be delivered to the Applicant and the Tribunal by 22 July 2021. This was to include details of the administration charges being demanded and how they have been calculated with reference to the terms of the lease permitting the charges to be demanded. The Directions contain a warning that the case of a Party who fails to comply with the Directions can be struck out.
5. The Respondents failed to respond.
6. On 5 January 2022 the Tribunal sent a letter to the Respondents repeating the terms of Direction 1 and requiring the Respondents to deliver the material requested in Direction 1 by 14 January 2022.
7. The Respondents failed to respond.
8. On 15 February 2022 the Tribunal sent a letter to the Respondents referring to the Directions and the letter of 5 January 2022, pointing out that the Tribunal has not received any response from the Respondents. Further the letter indicates that the Tribunal is being left with no alternative but to ban the Respondents from taking part in the proceedings but gives a further 14 days in which to comply with Direction 1.

9. The Respondents did not respond.
10. The Applicant has indicated that although he disputes the administration charges that have been demanded, he has paid them.
11. It is clear that no inspection of the street involved in this case is required.
12. Neither party requested a hearing. In fact the Respondents have not at any time communicated with the Tribunal. The Tribunal arranged for the issues in the case to be determined on 19 April 2022, by means of this Tribunal considering the written evidence in the case.

## **The law**

The Commonhold and Leasehold Reform Act 2002

SCHEDULE 11

ADMINISTRATION CHARGES

PART 1

Meaning of "administration charge"

Paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

## Paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

## Paragraph 4

(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013  
(as amended)

## Rule 9.— Striking out a party's case

(1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.

(2) The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal—

(a) does not have jurisdiction in relation to the proceedings or case or that part of them; and

(b) does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.

(3) The Tribunal may strike out the whole or a part of the proceedings or case if—

(a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;

(b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;

(c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;

(d) the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or

- (e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding.
- (4) The Tribunal may not strike out the whole or a part of the proceedings or case under paragraph (2) or paragraph (3)(b) to (e) without first giving the parties an opportunity to make representations in relation to the proposed striking out.
- (5) If the proceedings or case, or part of them, have been struck out under paragraph (1) or (3)(a), the applicant may apply for the proceedings or case, or part of it, to be reinstated.
- (6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to that party.
- (7) This rule applies to a respondent as it applies to an applicant except that—
- (a) a reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them; and
- (b) a reference to an application for the reinstatement of proceedings or case or part of them which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings, or part of them.
- (8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.

### **Relevant Provisions of the lease**

13. This lease contains provisions that permit service charges, administration charges and rent to be charged.
14. Rent is not defined in the definitions part of the lease but is stated to be £125 per annum on page 1 of the lease. The Tribunal therefore determines that rent refers to ground rent.
15. Clause 2 requires rent to be paid on 1 July each year.
16. Clause 3.1 provides for interest to be charged upon late payment of rent.
17. Clause 3.2 requires payment of all existing and future assessments and outgoings.
18. Clause 3.6 requires the payment of all charges and expenses incurred in the preparation of a notice under sections 146 and 147 of the Law of Property Act 1925.

19. Clause 6.1 deals with charges upon failure to pay rent.

### **The Deliberations**

20. The Respondent's have failed to respond to the Directions, sent to them on 8 July 2021 that warned that failure to respond might result in the defaulting Party causing damage to his or its case and that might include the case being struck out. Further, the Respondents have failed to respond to two additional letters from the Tribunal as detailed above.
21. As a result of the Respondents failure, the Tribunal has been left with no way of ascertaining what the administration charges might actually be for, under what provision of the lease they have been charged, whether or not they are chargeable at all and whether or not they have been charged in accordance with paragraph 4 of schedule 11 of the Commonhold and Leasehold Reform Act 2002.
22. The only information that the Tribunal has is the demand for payment dated 3 June 2021. This demands £1,506.78 and states that it included 6 payments of ground rent of £125 each for 6 specified years. The Tribunal has no jurisdiction to consider matters relating to ground rent, they are within the jurisdiction of the County Court. As such this Tribunal determines that it does not have jurisdiction to consider these six fees and will therefore strike out the claim as it refers to them. There are then another ten fees to a total value of £756.78. These are all capable of being administration charges in relation to which the Tribunal does have jurisdiction.
23. The Tribunal determines that considering the factors recited above it has no option but to order that the Respondents be barred from taking any further part in these proceedings pursuant to rule 9 (3) (a) and 9 (7) (a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 "the Rules". The Tribunal makes an Order to this effect. The Tribunal will therefore determine all issues relating to the sums making up the administration charges of £756.78 against the Respondents', pursuant to rule 9(8) of the Rules.
24. As such the Tribunal determines that £756.78 is made up of administration charges that should not have been charged because they are not chargeable within the terms of the lease, or, they have not been charged properly in pursuance of paragraph 4 of schedule 11 of the Commonhold and Leasehold Reform Act 2002, or that they are wholly unreasonable.
25. The Tribunal notes that the Applicant paid these fees because he is in the process of selling the property. The sale may have already been

completed. As such the Tribunal determines that rather than making a refund to the Applicant's service charge account, the repayment must be made direct to the Applicant, by Bellway Homes Limited.

26. The Applicant request orders pursuant to section 20C of the Landlord and Tenant Act 1985 and the Commonhold and Leasehold Reform Act 2002, paragraph 5A of schedule 11, restricting the landlord in charging the costs of these proceedings against the Applicant as part of a service charge or as an administration charge. The Tribunal notes that the Respondents have failed to comply with Directions in such a way that the Respondents have been barred from further involvement in the case. As such the Tribunal considers it to be fair, just, reasonable and equitable to make these orders.

## **Decision**

27. The Tribunal decides that it does not have jurisdiction to consider the six charges of £125 that are specified as being ground rent because they fall within the jurisdiction of the County Court. The Tribunal will strike out the application as it refers to these six fees, making a total of £750 struck out.
28. This leaves the Tribunal with a total of £756.78 to consider.
29. The Tribunal decides that as a result of the Respondents failure to provide information required by Direction 1 of the Directions of 8 July 2021 and two subsequent letters the Tribunal orders that the Respondents be barred from any further involvement in this case pursuant to rule 9 (3) (a) and 9 (7) (a) of the Rules. As a result the Tribunal determines all remaining issues against the Respondents pursuant to rule 9 (8) of the Rules.
30. The Tribunal therefore decides that the sum of £756.78 has been paid by the Applicant to the Respondents when it should not have been paid and Bellway Homes Limited must repay £756.78 to the Applicant within 14 days of this Decision being sent to the Parties.
31. The Tribunal decides that it is fair, just and equitable to order that the landlord shall not charge any litigation costs in relation to these proceedings as an administration charge against the Applicant, pursuant to the Commonhold and Leasehold Reform Act 2002, paragraph 5A of schedule 11.
32. The Tribunal decides that it is fair, just and equitable to order that the landlord shall not regard any costs in these proceedings as being relevant to the calculation of service charges, pursuant to section 20C of the Landlord and Tenant Act 1985.

33. The Tribunal notes that pursuant to rule 9 (7)(b) and 9(8) of the Rules the Tribunal need not consider any submission made by the Respondent until such time as the Tribunal has agreed to lift the bar on further involvement with the case. As such if the Respondents wish to appeal, they must explain why it is that they failed to respond to the Directions as detailed above and ask for the barring to be lifted.
34. Appeal against this Decision is to the Upper Tribunal. Should either party wish to appeal against this Decision they must do so within 28 days of the Decision being sent to the Parties, by delivering to this First-tier Tribunal's office an application asking for permission to appeal, stating the grounds for the appeal, particulars of the appeal, the paragraphs of the Decision that are challenged and the result that the appellant seeks as a result of making the appeal.

Judge Tonge

Annex 1, Order to strike out for lack of jurisdiction.

Annex 2, Order to bar the Respondents from taking any further part in this case.

**Date this Decision sent to the Parties 10 May 2022**



**ANNEX 1.**

**Case Reference:** MAN/00EW/LAC/2021/0005

**Applicant:** Mr Paul Victor Williams

**Property:** 5 Naylor Road, Rivacre Village, Ellesmere Port,  
Cheshire, CH66 1DS

**Respondents:** (1) Bellway Homes Limited  
(2) Mainstay Residential Limited

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**ORDER TO STRIKE OUT PART OF THIS CASE FOR WANT OF  
JURISDICTION**

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The Tribunal does not have jurisdiction to deal with the part of this case that is six ground rent payment demands of £125 per annum, making a total of £750, because they are within the jurisdiction of the County Court and not this Tribunal. As such the Tribunal now orders that the part of this application already referred to in this Order be struck out pursuant to Rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (as amended).

Judge Tonge

**ANNEX 2.**

**Case Reference: MAN/00EW/LAC/2021/0005**

**Applicant: Mr Paul Victor Williams**

**Property: 5 Naylor Road, Rivacre Village, Ellesmere Port,  
Cheshire, CH66 1DS**

**Respondents: (1) Bellway Homes Limited  
(2) Mainstay Residential Limited**

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**ORDER TO BAR THE RESPONDENTS FROM TAKING FURTHER  
PART IN THE PROCEEDINGS FOR FAILURE TO REPLY TO  
DIRECTIONS**

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The Tribunal bars these Respondents from taking any further part in this case because they have failed to respond to Directions in this case and the Tribunal now determines all issues against the Respondents, Rule 9(3)(a), 9(7)(a) and 9(8) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (as amended).

Judge Tonge