



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY) &
IN THE COUNTY COURT AT EXETER,
EXETER HEARING CENTRE,
SOUTHERNHAY GARDENS, EXETER.
EX1 1UH.**

Tribunal reference : CHI/18UK/LSC/2023/0029

Court claim number : K1AY 2RoK

Property : 33 Chichester House, Coates Road, Exeter,
Devon. EX2 5RP.

Applicant/Claimant : Chichester House Management Company
Limited.

Representative : Martin Young (Counsel).

Respondent/Defendant : Andrew Billen.

Tribunal members : Judge C A Rai (Chairman) and Mr M Ayres
FRICS and Mr M Jenkinson.

In the county court : Judge C A Rai.

**Date and venue of the
hearing** : 7 March 2025
The Tribunal Centre, Keble House, Southernhay,
Exeter. EX1 1UH.

Date of decision : 14 April 2025

DECISION

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be the date this decision is sent to you.

Summary of the decisions made by the Tribunal

1. The following sum is payable by Andrew Billen to Chichester House Management Company Limited by 12 May 2025:-
Service charges: £ 6,558.40

Summary of the decisions made by the Court

2. The following sums are payable by Andrew Billen to Chichester House Management Company Limited by 12 May 2025:-
 - (i) Legal costs under clause 2(k)(i) of the lease: £13,214.54
 - (ii) Fixed costs of £555.00.
 - (iii) Interest on the arrears of service charges at £66.12 and continuing to accrue from the date of Judgement to the date of payment at 8%.

The proceedings

3. Proceedings were originally issued against the Respondent on 18 October 2023 in the County Court Civil National Business Centre, St Katharine's House, Northampton NN1 2LH, under claim number K1AY 2RoK. The Respondent filed a defence, the exact date of which is unclear from the documents produced to this Tribunal. The Court treated the defence as a counterclaim, notified the Applicant and put the Defendant on notice that he had 10 days in which to pay the court fee (for his counterclaim). The Defendant did not pay the court fee, and his counterclaim was struck out. The proceedings were subsequently transferred to this Tribunal on 21 June 2024, by Order of Deputy District Judge Eaton-Hart.
4. Directions were given by the Tribunal in July 2024. A video case management hearing took place which the Respondent attended by telephone. The Applicant was represented by Counsel (Mr Byles). Further Directions were given by the Tribunal on 19 August 2024. The Respondent confirmed he had agreed that the Applicant could correspond with him by email. The parties were directed to exchange evidence and documents. They were also advised that the Tribunal intended to hear the proceedings in the 4 weeks commencing 4 November 2024. The Directions stated that the parties could agree to changes in the dates for compliance with the directions, but any delay in the submission of the hearing bundle must be agreed and authorised by the Tribunal.
5. Thereafter, the Respondent failed to supply a statement, which the Applicant subsequently submitted meant it was unable to respond effectively as it lacked information about a possible defence.
6. The hearing was initially listed for 7 November 2024, but the deadline for submission of statements and the bundle was extended in response to the Applicant's case management application, dated 24 October 2024.
7. The Respondent failed to comply with the Directions and the Applicant sought an extension of time for its compliance, still stating that it had insufficient information about the Respondent's case to enable it to submit its response.

8. For administrative reasons the Tribunal the hearing on 7 November 2024 was postponed until 29 January 2025.
9. Without any reference to the Tribunal, the parties decided, between themselves, to postpone the hearing scheduled to take place on 29 January 2025. The proceedings were finally heard on 6 March 2025.
10. At the hearing the Tribunal requested that the Applicant supply further information about the service charges, including copies of the accounts, service charge budgets and minutes of the annual leaseholder meetings, which it agreed to do within two weeks. The Tribunal gave directions on 7 March 2025 confirming the oral request made at the Hearing. The Applicant has eventually complied with those directions, albeit two weeks later than was originally agreed. The Respondent was unhappy about the delay expressing concern that the Applicant would claim further costs.
11. The Applicant freeholder, was represented at the hearing by Martin Young of Counsel, instructed by Bradys, Solicitors with Julie Weaver of Firstport Limited (the Managing Agent) also attending on its behalf. The Respondent leaseholder, Andrew Billen appeared in person.

The background

12. The subject property is 33 Chichester House, Coates Road, Exeter, Devon. EX2 5RP. It is a leasehold flat in a block of 44 leasehold properties.
13. The Tribunal has not inspected the Property. Neither party requested an inspection.
14. The Tribunal received an initial Hearing bundle from the Applicant in November 2024. Subsequently, following the adjournment of the hearing (scheduled for 7 November 2024) the Applicant applied to submit a revised bundle which it did in January 2025 (136 pages). The Respondent sent a separate bundle to the Tribunal in January 2025 (20 pages). On the day before the hearing the Applicant sent a combined bundle to the Tribunal which was rejected. Separately it also supplied a skeleton argument from Mr Young (Counsel) and a statement of costs in form N60. After the hearing on 2 April 2025 the Tribunal received an additional bundle (123 pages) containing service charge accounts for 2017 – 2023, service charge budgets for 2017 – 2024 and minutes of leaseholder meetings held in May 2017, June 2018, October 2019 and May 2023.
15. References in this decision to numbers in square brackets are to pdf page numbers the Applicant's January Bundle. References to numbers in square brackets preceded by "R" are to pdf page numbers in the Respondent's bundle (20 pages). References to numbers in square brackets preceded by "A" are to documents in the additional bundle.

16. Although the Tribunal has been provided with, and examined, all the evidence and statements in the parties submissions, taken account of submissions made during the hearing, and emails and the bundle sent to the Tribunal following the hearing, it has not referred specifically to every statement or piece of evidence considered in this decision, nor has it elaborated, at length, on its conclusion or reasoning. This decision is intended to provide the parties with reasons for the decision which are proportionate both to the resources of the Tribunal, the significance and complexity of the issues before it and which explain how the Tribunal reached its conclusions.

The issues

17. The sums claimed by the Applicant are:
- (a) Service charges between 1 December 2017 and 30 November 2023 totalling £6,558.40 [36] the “disputed service charges”.
 - (b) Contractual costs £3,889.80 [10] (including the Court fee of £455 and Legal Representatives fee of £100 listed on the claim form [6].
 - (c) Interest on the arrears in the sum of £66.12 [10] and accruing at £1.44 per day from the date of this judgement until the date of payment.
 - (d) Contractual costs itemised in the costs schedule for legal costs incurred after 20 October 2023 of £19,723.20.
- (Total £30,237.52)**
18. On the day before the Hearing the Applicant sent the Tribunal a statement of costs and during the County Court Hearing Mr Young gave the Judge a copy of a Schedule of Costs, which he said itemised the costs claimed on the Particulars of Claim (£3,244.00). He said the description “Fixed fee issue of claim” included the Legal Representatives fee of £100. Part of the note at the bottom of the page states “Litigation costs from 20 October 2023 are set out on court form N260 (used for convenience only)....”

The Hearing

19. Martin Young of Counsel spoke on behalf of the Applicant. Julie Weaver represented the managing agent of the Applicant. She explained to the Tribunal that she was previously employed by Whitton and Laing (the former managing agent) and currently employed by FirstPort Residential Property Management. She said she has “firsthand knowledge” about all the disputed service charges, having been involved with the management of the building, in which the Property is located since 2014, initially as a resident director of the Applicant.
20. The Tribunal explained that its jurisdiction is to determine the reasonableness of the service charges claimed (and unpaid) and the reasonableness of the services provided. The parties were referred to sections 27A, 18 and 19 of the Landlord and Tenant Act.
21. The Tribunal summarised the service charge provisions in the lease which broadly provide for service charges to be paid in advance on account, with a certificate of expenditure provided following the end of the service charge year, if requested and for service charge accounts to be prepared subsequently.

22. Miss Weaver explained that it had been resolved to collect service charges monthly at a meeting of the leaseholders in 2014. The Respondent had paid his service charges monthly by standing order between 2014 and March 2016.
23. It was identified that not all of the invoices for the disputed service charges are in the bundle. No explanation was offered by Mr Young. He referred to a statement of account, attached to the particulars of claim which refers to each amount demanded (all the disputed service charges) [31 – 36]. The Respondent has not disputed the amounts claimed.
24. The Respondent claimed that the managing agent (Whitton and Laing) failed in its duty of care to him which he said has impacted negatively on his life. He said that roof repairs outlined by Whitton and Laing in 2015, which were partly grant funded, had not been done following consultation, and leaks had affected his office (No 28) [R 2].
25. The Respondent complained about dogs barking and residents being allowed to keep cats leading to fouling of common areas and said and that nothing was ever done by the managing agent to address his complaints. However, he said that the current managing agent (FirstPort) do not allow pets.
26. The Respondent referred to a repair outside No 33 Chichester House which resulted in render being completely removed from part of an external wall. The render was not reinstated for six months which resulted in both water ingress and damp. He suggested that the render was never properly repaired suggesting that this has caused a diminution in the value of his property [3].
27. The Respondent complained that the Applicant did propose “an offer” at the case management meeting and had not attended telephone mediations schedule for 15 March 2024 and 25 March 2024 (both of which he had attended).
28. The Respondent suggested that as some of the service charges go back more than 8 years these are statute barred. He also complained that the shed which has an asbestos roof is constantly flooded and unusable [4].
29. Another complaint made by the Respondent was that the service charge demands were addressed and sent, to the flat he used as his office, (No. 28) not the flat in which he lived and which he owned (No. 33). He accepted that he sometimes received post at his “office” address. He did not deny that he had received the service charge demands.
30. The bundle contains two copies of the Applicant’s letter before action sent to both No. 28 and No. 33 Chichester House.
31. The bundle does not contain any copies of service charge estimates, certificates of expenditure or service charge accounts. Mr Young said the Applicant had anticipated that it would be asked to supply this information in response to the Respondent’s defence and had wanted to examine that before deciding what to disclose in its bundle. Miss Weaver confirmed that she would be able to supply copies of service charge accounts and estimates for the relevant years.

32. Although the Respondent claimed that he has, or is still paying, towards the disputed service charges, it was established, by referring to a copy of a Warrant Breakdown [R20], included in his bundle that current payments related to a judgement obtained by the Applicant against the Respondent for an earlier service charge debt.
33. Miss Weaver confirmed that the Respondent has been making regular payments in settlement of the earlier debt. Miss Weaver was able to provide the Tribunal with some details of those payments.
34. Miss Weaver said that the Respondent had paid service charges monthly by standing order until 17 March 2016. Since that date he has not made any payment towards service charges. She also confirmed that the amount of the payments received from the Respondent towards payment of the earlier debt varied. She referred to receipt of monthly payments of £39, £25.35 and £34.50 per month.
35. Mr Billen stated that the monthly payments were set by the court and could not be varied. The total service charge debt, the subject of the earlier judgement, (which preceded 2 May 2018), shown on the Warrant Breakdown was £2,347.84. Additional sums listed related to enforcement and other costs.
36. Miss Weaver said that sums received by the Applicant are allocated as credits against the debts to which these relate.
37. Mr Young said that none of the matters listed in the Respondent's statement and referred to as complaints constituted a valid defence to his liability to make the service charge payments.
38. Whilst Mr Billen claimed during the hearing that he made numerous telephone calls and might have sent letters to the Applicant, he has not provided any evidence.
39. Mr Young said that, had the Respondent intended to pursue a counterclaim he could, and should, have paid the County Court fee.
40. The liability to pay service charges is contained in the Respondent's lease and is contractual. Therefore a "Limitation Act" claim based on the "age of the debt" is not possible because the debt is a "contractual" debt.
41. Miss Weaver confirmed that a recent complaint made by the Respondent about the disrepair of the building in which the Property is located, was investigated but not substantiated. The Tribunal told the parties this was not relevant as it does not relate to the period of the claim.
42. Following the parties' submissions the Tribunal asked the Respondent if he wished to make any cost applications, and he said that he did not.

43. The Tribunal told the Applicant that it wished to see copies of the service charge estimates, certificates of expenditure, accounts and minutes of leaseholder meetings. Miss Weaver confirmed that she could supply these for the period of the claim, save and except when leaseholder meetings had been suspended during the Covid-19 pandemic.
44. Mr Billen acknowledged that he recollected discussions about some of those matters during the leaseholder meetings he had attended.
45. The Tribunal said that it would issue post hearing directions and Miss Weaver confirmed that she would be able to supply the additional documents, in an agreed format within 14 days.

Tribunal's decision

The law and the lease

46. Relevant extracts from the Landlord and Tenant Act are in Appendix 1 of this decision. The debt due from the Respondent to the Applicant is a contractual debt for service charges due under the lease of the Applicant's flat at 33 Chichester House. Copies of his leasehold title to the Property, on 27 September 2023, have been disclosed [13].
47. Section 29(c) of the lease of the Property contains a lessee's covenant to pay, as additional rent, a share of the expenses and outgoings incurred by the lessor in connection with its obligations referred to in the lease as "matters set out in the Fourth Schedule". The amount of the Service Charge and the share payable by the lessee is to be ascertained and certified in a certificate signed by the lessor's auditor or managing agent as soon as possible after the end of the financial year. The lease provides for the financial year to run from 1 March to 31 April.
48. A copy of the certificate of expenditure may be requested by the lessees, but Miss Weaver suggested that certificates were generally distributed with the annual service charge accounts at the leaseholders' meetings, which usually took place after the end of August. The lease provides for service charges to be paid "on account", if the lessor requires, and the Applicant's evidence is that this was agreed and monthly service charges on account of service charges have been collected since 2014.
49. The lease provides for lessor to provide a statement of account to each lessee after the issue of the certificate of expenditure showing whether its service charge is in credit or debit whereupon it can collect any deficit or allow any credits against future liabilities.
50. The Tribunal decided that although some service charge demands and a statement of account [31 – 36] were disclosed in the bundle it wished to see copies of the accounts, estimates, certificates and minutes. The additional bundle contains service charge accounts, estimates and minutes of four leaseholder meetings during the period of the claim. This information showed the amount of the disputed service charges, the lessor's expenditure and service charge estimates.

51. One of the Respondent's complaints is that the works to the roof which were the subject of a consultation in 2015 were not finally completed until 2023. However, he stopped regularly paying his service charges in 2016 with the only payments he has made since that date relating to the satisfaction of the judgement debt for unpaid service charges between 2016 and November 2017. The provision for roof works (£8.55 per month) is shown on the service charge demands issued between December 2018 and September 2023 [31 – 36]. The minutes of the leaseholder meetings disclosed discussions with the leaseholders about the timing of the proposed works, the accumulation of the necessary funds and service charge debts, which the Tribunal has assumed include the service charges which the Respondent had not paid.
52. The Tribunal is satisfied that the Applicant has complied with the provisions in the lease regarding estimation and collection of service charges. The minutes of the leaseholder meetings record that annual increases in service charges were discussed and agreed by the leaseholder who attended.
53. The Respondent has provided no compelling physical evidence of the complaints he said he has made with regard to the alleged absence of services. The shed which he claimed he could not use, is a communal shed. The photographs of the render which he provided are not dated. His complaints about damp referred to No.28, which is not the subject of these proceedings.
54. Although it appears to have taken a number of years, the parties agreed that roof repairs have now been completed.
55. The minutes of the leaseholder meetings record that the managing agents discussed ways in which it might be possible to prevent pets being kept in properties and also how neighbourhood dog walkers could be discouraged from allowing pets to foul the grounds. These also referred to the cost of the roof works being spread over a number of years to enable the accumulation of sufficient service charge funds.
56. The Respondent has hitherto not contributed any payments towards the costs of the roof repairs, save and insofar this was included in the payments being made to repay his earlier debt.
57. For all of those reasons the Tribunal finds that the "on account" service charges demanded and identified in the Applicant's claim, for the relevant years (1 December 2017 – 30 November 2023) are reasonable and payable by the Respondent.

County Court Decision and Reasons

58. Documents in the hearing bundle are referred to by their page number, so that [1] refers to page 1.

59. The Claimant claimed:
 - (a) Service charges demanded (on account) between December 2017 and September 2023 - £6,558.40
 - (b) Court issue fee - £455
 - (c) Legal representative's costs - £100
 - (d) Interest to the date of the claim £66.12 and continuing until the date of judgement
 - (f) Contractual costs - £3,334.80plus, Contractual costs recoverable under the lease
60. In these proceedings the Claimant is the successful party in respect of its claim for unpaid service charges between December 2018 and September 2023 (the disputed years).
61. I agree with the FTT's findings that, in the absence of the Respondent providing any satisfactory explanation as to why he has not paid his service charges, those charges demanded are payable.

Service charges, Administration Charges and Fixed and Court Costs

62. The FTT has determined that the amount of the "on account" service charges demanded are reasonable for the period between December 2017 and September 2023. Therefore, the Claimant succeeds with its claim for service charges of £6,558.40. It also succeeds with its claim for interest of £66.12 on the arrears.
63. The Claimant has also claimed fixed costs and Court fees and Contractual Costs. Notice of allocation of the claim to the small claims track was given by the Court in paragraph 2 of the Notice of Allocation dated 1 February 2024 [52].
64. **CPR 27.14** contains provisions about the costs which may be ordered to be paid by one party to another.
65. The total shown on the Particulars of Claim is £3,889.80 [10]
66. The Claimant is therefore entitled to recover the Court Issue Fee of £455 and fixed costs of £100 in respect of the issue of the proceedings [1].
67. In paragraph 11 of the particulars of claim, the Claimant has asked for an additional £3,889.80 as contractual costs incurred prior to the issue of the County Court Claim and seeks a determination that its costs incurred of £3,889.80 are payable by the Defendant [5].
68. That sum includes the £455 referred to in paragraph 66 above.
69. Counsel handed me a schedule of costs claimed on the Particulars of Claim during the Hearing. It was not sent to the Court before the Hearing. It is not an invoice. There are no invoices from Bradys, the Applicant's solicitor in the bundle. The note at the bottom of the schedule states that these fees are not included in the costs schedule but claimed as **additional fees**.

70. The statement of claim stated that the Claimant is entitled to these fees as contractual costs. However, these costs should have been itemised and included within the costs schedule, and they have not been, therefore I have made no award.

71. I therefore determine that the Defendant is liable to pay the following sums to the Claimant:-

	£
Service charges	6,558.40
Fixed legal costs	100.00
Court fee	455.00
Total	<u>7,113.40</u>

Contractual Costs

72. The Claimant has also claimed its contractual costs after the date of issue of the claim and submitted a Statement of Costs to the Court in form N260 prior to the hearing in accordance with the Court's directions. The Defendant was sent a copy of the Statement of Costs before the Hearing and provided the Respondent with a copy to which he could refer during the Hearing.

73. **CPR 44** governs the Court's discretion as to costs. The general rule is that if the Court decides to make an order about costs, the unsuccessful party will be ordered to pay the costs of the successful party.

74. Mr Young submitted that the Claimant, if successful, is entitled to its contractual costs pursuant to Clause 2(k)(i) of the lease by which the tenant covenants with the lessor:-

2(k)(i) To pay unto the Lessor all costs charges and expenses (including legal costs and surveyor's fees) which may be incurred by the Lessor incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 by the Lessor or incurred in or in contemplation of proceedings under Section 146 or 147 of that Act notwithstanding forfeiture may be avoided otherwise than by relief is granted by the Court [19].

75. Evidence that the Claimant intended to apply for forfeiture proceedings was indicated by the Claimant stating that a determination that the amount claimed as service charges should be paid would be relied upon under section 81 of the Housing Act 1996 [76]. This is not referred to in the Particulars of Claim. The Defendant acknowledges he has been threatened with eviction in his defence to the County Court claim [41]

76. The evidence I have found in the bundles, which supports Mr Young's submissions, is the Letter of Claim dated 27 September 2023 pursuant to The Pre-Action Protocol for Debt Claims which referred to the risk of the Defendant losing his home by failing to make payment [44]. That letter was sent both to the Property [87] and to 28 Chichester House [75].

77. I am satisfied that clause 2(k)(i) of the lease provides the Claimant with a contractual entitlement to recover all its legal costs from the Defendant. The Letter of Claim contained a clear warning to the Defendant that the Claimant

would consider taking proceedings to forfeit the lease. Clause 2(k)(i) is similar (in construction) to the clause considered in the case of **Freeholders of 69 Marina, St Leonards-on-Sea v Oram EWCA Civ 1258**. That Court of Appeal case is authority for the fact that costs incurred in relation to a tribunal hearing were incidental to the preparation of the s.146 notice and were recoverable from the defendants under the provisions of their leases.

78. The Applicant's statement of case also specifically refers to clause 2(k)(i) of the lease [71].
79. Relying on the evidence in the bundle and the content of the letter dated 27 September 2023, I am satisfied that the Claimant made the Defendant aware that his failure to pay the sums referred to in the claim might result in it pursuing a claim for forfeiture and his losing the right to occupy the flat.
80. As stated by Sir Andrew Morritt **Freeholders of 69 Marina, St Leonards-on-Sea v Oram EWCA Civ 1258** Section 81 of the Housing Act 1996 recognises that a notice under section 146 of the Law of Property Act 1925 cannot be served on a tenant for failure to pay a service charge (even if reserved as rent) which is so in the lease, unless it is finally determined by a leasehold valuation tribunal [now the FTT] that the amount of the service charge is payable (or that the tenant admits it is payable). He went on to say that "in short the enforcement of the liability of the tenants required (in that case) first the determination of the tribunal and second a section 146 notice". This resulted in the Court of Appeal dismissing the tenants appeal against the County Court's judgement that the costs incurred by the landlord were incidental to the service of the section 146 notice and recoverable from the tenant.
81. Mr Young referred me to the content of the costs statement suggesting that the hourly rates were reasonable and reflected the use of the correct grade of lawyer for the complexity of the case. When I questioned him about the amount of time the Applicant's solicitors have charged for "letters out" 12.4 hours to the Applicant; 6.3 hours to the Defendant; 11.8 on letters to "others" the majority of which can only be to the Tribunal (as this postdates the Court application), his response was that the form was signed by a senior partner so must be correct. He also expressed the opinion that the costs were reasonable, notwithstanding that I suggested that the costs are disproportionate to the amount of the unpaid service charges. He said his client is entitled to indemnity costs.
82. The proceedings were issued in the Court on 18 October 2023. The Tribunal gave directions following the video case management hearing on 19 August 2024 which confirmed that the Respondent agreed to receive correspondence by email. The only correspondence in the bundle between those dates is the correspondence between the Applicant and the County Court. Following the transfer of the proceedings to the Tribunal (21 June 2024) (sent 16 July 2024) [48] the Tribunal gave directions dated 15 July 2024 [50] directing amongst other things that all correspondence with the Tribunal must be by email.

83. The only submission made to me by the Defendant with regard to the Claimant's costs during the Hearing was to say that he had not been at fault for the Applicant failing to attend two mediation hearings arranged in the County Court. Miss Weaver said she had not been aware of the second hearing and was not asked to participate in the first. It is not possible for me to make any assessment from the Defendant's submissions whether mediation might have enabled settlement of the dispute. The evidence of his unwillingness to comply with the Tribunal's directions, has led me to concluded that that he has consistently been reluctant to cooperate fully with the Tribunal during these proceedings. Following the hearing the Defendant complained about the delay by the Claimant in submitting the further information it was directed to provide. He stated that he did not agree to its request for additional time. He also suggested that there was a conspiracy to extend deadlines, and he believed that the Claimant's intention was to raise more costs, [email to tribunal dated 31 March 2025].
84. The Defendant also submitted that he should not be obliged to contribute to any costs arising from the postponement of the hearing scheduled to be held in January 2025, to which he had agreed, but the core reason for which appears to have been the unavailability of the Applicant's witness on the scheduled hearing date.
85. The overriding objective in **CPR1** requires that I deal with a case justly ensuring as far as practicable that the parties are on an equal footing and can participate fully in the proceedings so I must, and I have, taken account of the fact that the Defendant is unrepresented.
86. The Tribunal has assisted the Defendant by preparing an electronic copy of his paper bundle.
87. Recovery of contractual costs is governed by **CPR 44.5** which provides that:
(1) Where the court assesses (whether by summary or detailed assessment) costs which are payable by the paying party to the receiving party under the terms of a contract, the costs payable under those terms are, unless the contract expressly provides otherwise, to be presumed to be the costs which—
(a) have been reasonably incurred; and
(b) are reasonable in amount,
and the court will assess them accordingly.
(2) The presumptions in paragraph (1) are rebuttable.

Practice Direction 44- General rules about costs sets out the circumstances where the court may do otherwise.

(3) Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party

88. The effect of **CPR 44.5** is to shift the burden of proof from the Claimant to the Defendant. If the Defendant is not satisfied that the costs are reasonable in amount or were reasonably incurred, he must demonstrate why he believes the Court should depart from the rule.
89. Although the proportionality test does not apply in relation to contractual costs, the presumption that the costs have been reasonably incurred and are reasonable in amount is still rebuttable, and a Defendant who is not satisfied that the costs are reasonable in amount or were reasonably incurred must be given an opportunity to tell the Court why he believes that it should depart from the rule.
90. The Court of Appeal reviewed the law and set out the principles which the Court should apply in **Chaplain Ltd v Kumari [2015] EWCA Civ 793**. The principles relevant to my determination of this case are that:
(a) An order for payment of costs of proceeding by one party to another party is always a discretionary order (s. 51 of the Senior Courts Act).
(b) Where there is a contractual right the discretion should ordinarily be exercised so as to reflect that contractual right.
91. In these proceedings I am satisfied that the Claimant has shown that Defendant failed, without justifiable excuse, to pay the service charges demanded for the disputed years.
92. I have started with the premise that the costs, are recoverable on an indemnity basis (in accordance with the Defendant's contractual obligation). In this case clause 2(6) of the lease refers to an obligation on the part of the lessee "to pay all expenses including solicitors costs....." [53]. I may still exercise my discretion to assess these, notwithstanding that ordinarily in so doing, I will take account of the contractual right of the Claimant to recover the costs.
93. I have examined the hourly rates applied by the Claimant's solicitors and referred to in the costs schedule. Mr Young suggested, and I am minded to agree with him, that the rates quoted are reasonable and that the grade of fee earner used was appropriate.
94. However, this dispute was not complicated, and it should not have been difficult for the Applicant's solicitor to collate all the evidence efficiently. As identified, only some or the relevant invoices were put in the bundle [412].
95. I have considered the amount of time allocated for letters out in the N260. Given the nature of this dispute and the fact that it will have been the case that most, if not all, the correspondence was sent by email, certainly that is so with regard to all correspondence with the Tribunal after 15 July 2024, I consider that it unlikely that more than 30 hours were spent by the Applicant's solicitors on letters after the issue of the claim. The costs in respect of the letters prior to the issue of the claim do not appear to have been included in the schedule, but even if these were, and taking into account that that the letter of claim was sent to two different addresses, the time spent remains, in my view, excessive.

96. The other item which I have examined is Counsel's fee for attending the Hearing. He claimed that it is entirely appropriate for senior counsel to have been retained because of Defendant's reluctance to provide any information about his defence. He rebutted my suggestions that the Applicant's solicitors knew more than was disclosed in the bundle when I referred him to emails sent to both the Tribunal and the Applicant's solicitors at the same time relying instead on the fact that I had said in the Tribunal directions that the emails were illegible. Taking account that Counsel was not retained at that time I accept he might not have had actual knowledge about the information the Applicant's solicitors possessed and will probably have relied only on the information which accompanied his instructions.
97. However, I remain unconvinced that it was either necessary or desirable for the Applicant, to employ senior Counsel to act on its behalf in relation to a dispute of this type.
98. Whilst I do not suggest that Counsel has charged an unreasonable amount for a day's attendance at the Hearing, there was nothing complicated about this claim. The value of the claim and the complexity, or rather lack of complexity, does not, in my view, justify the use of Counsel at all and certainly not senior Counsel. The evidence given by Miss Weaver representing the Applicant's Managing Agent was clear and on point. She demonstrated that she possessed extensive knowledge of both the history of the service charges and the Respondent's payment record. She subsequently provided information which supported the submissions which she made during the Hearing.
99. Balancing all of those circumstances I find it appropriate to allow recovery of 67% of the costs claimed. In addition, I have already awarded the Court fees (£455 and £100) These amounts were not included on the N260. 67% of the costs itemised leaves the sum of £11,012.12, to which VAT must be added £2,202.42 making a total of £13,214.54.
100. I find that the Claimant is entitled to recover contractual costs of £13,214.54.

Conclusion

101. The Defendant is ordered to pay to the Claimant the outstanding service charges, the administration charges, the fixed costs, the Court Fee and the contractual costs as set out below.

Service charges	6,558.40	
Interest	66.12	6,614.52
Fixed costs	100.00	
Court Fee	455.00	555.00
Contractual costs		13,214.54
Total		<u>£20,394.06</u>

102. The sum of £20,394.06 is to be paid within **28 days** of the date of this decision.
103. Interest is payable at the rate of 8% from the date of this decision until the date of settlement at the daily rate of £1.44.

104. I have drawn a form of judgment that will be submitted with these reasons to the County Court at Exeter, Exeter Hearing Centre, Southernhay Gardens, Exeter, EX1 1UH to be entered in the Court's records.

Name: Judge C A Rai

Date: 14 April 2025.

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against a reserved judgment made by the Judge in his/her capacity as a Judge of the County Court

1. A written application for permission must be made to the court at the Regional Tribunal office which has been dealing with the case.
2. The date that the judgment is sent to the parties is the hand-down date.
3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.
4. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties;

5. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the Regional Tribunal office within 21 days after the date the refusal of permission decision is sent to the parties.
7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

8. In this case, both the above routes should be followed.

Appendix

Landlord and Tenant Act 1985

18.— Meaning of “service charge” and “relevant costs” .

(1) In the following provisions of this Act “*service charge*” means an amount payable by a tenant of a [dwelling]¹ as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance [, improvements]² or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose—

(a) “*costs*” includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Notes

¹ Word substituted by Landlord and Tenant Act 1987 (c.31), s. 41, Sch. 2 para. 1

² Word inserted by Commonhold and Leasehold Reform Act 2002 c. 15 [Sch.9 para.7](#)

(March 30, 2004 as SI 2004/669)

19.— Limitation of service charges: reasonableness.

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

[...]¹[...]²[

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken

those proceedings in the county court, he shall not be entitled to recover any costs.

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Notes

1 Repealed by Commonhold and Leasehold Reform Act 2002 c. 15 [Sch.14 para.1](#) (March 30, 2004: repeal has effect as SI 2004/669 subject to savings specified in SI 2004/669 Sch.2 para.6)

2 Repealed by Housing Act 1996 c. 52 [Sch.19\(III\) para.1](#) (September 1, 1997: as in SI 1997/1851)

3 S.19(5) inserted by Landlord and Tenant Act 1987 (c.31), s. 41, Sch. 2 para. 2(b)

27A Liability to pay service charges: jurisdiction

(1) An application may be made to [the appropriate tribunal][2](#) for a determination whether a service charge is payable and, if it is, as to—

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to [the appropriate tribunal][2](#) for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

- (c) has been the subject of determination by a court, or**
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.**
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.**
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—**
 - (a) in a particular manner, or**
 - (b) on particular evidence,****of any question which may be the subject of an application under subsection (1) or (3).**
- (7) The jurisdiction conferred on [the appropriate tribunal]² in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter. [...]³**

¹

Notes

- ¹** Inserted subject to savings specified in SI 2003/1986 Sch.2 para.6 by Commonhold and Leasehold Reform Act 2002 c. 15 [Pt 2 c.5 s.155\(1\)](#) (September 30, 2003: insertion has effect as SI 2003/1986 subject to savings specified in SI 2003/1986 Sch.2 para.6)
- ²** Words substituted by Transfer of Tribunal Functions Order 2013/1036 [Sch.1\(1\) para.54](#) (July 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/1036 art.6(3) and Sch.3)
- ³** Inserted subject to savings specified in SI 2004/669 Sch.2 para.6 by Commonhold and Leasehold Reform Act 2002 c. 15 [Pt 2 c.5 s.155\(1\)](#) (March 30, 2004: insertion has effect as SI 2004/669 subject to savings specified in SI 2004/669 Sch.2 para.6)