FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/00HG/LBC/2026/0007
Property	**:**	429 Budshead Road, Whitleigh, Plymouth, Devon PL5 4DS.
Applicant	**:**	Plymouth Community Homes Limited..
Respondent	**:**	Vicky Sole and Peter Oldaker AKA Albert Hibbert
Type of Application	**:**	Application for an order that a breach of lease has occurred; Section 168(4) Commonhold and Leasehold Reform Act 2002 (CLARA).
Tribunal Members	**:**	Judge C A Rai Mr J Reichel MRICS.
Date type and venue of Hearing	**:**	30 October 2026 Face to Face Plymouth Magistrates' Court StAndrew Street PL3 2DP.
Date of Decision	**:**	3 November 2026.

DECISION

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1. The Tribunal determines that the Applicant has breached multiple covenants contained in his lease of the Property. Full details of its specific findings are set out below together with the reasons for its decision.

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Background

2. The Applicant applied to the Tribunal for an order that a breach of the Lease of the Property, 429 Budshead Road, Whitleigh Plymouth PL5 4DS, (the Lease) on 11 March 2026, has occurred.

3. As explained, later in this decision Vicky Sole, the first named Respondent, is the sole executor of the estate of Georgina Hibbert (deceased); Peter Oldaker AKA Albert Hibert, named as an additional Respondent is the beneficiary of the estate of the Georgina Hibbert. He occupies the Property and is the son of the late Georgina Hibbert.

4. The application listed five breaches of covenants, contained in various paragraphs of the Fifth Schedule to the Lease. It disclosed that the Applicant has already successfully obtained an Injunction Order dated 17 July 2025 (the injunction) which ordered Mr Oldaker to remove gates, locks and other items, from a shared area, remove an external staircase and door, reinstate a window and redecorate part of the building of which the Property forms a part, affected by those works.

5. Ms Joanne Lake, a leasehold team leader, employed by the Applicant made a witness statement, dated 11 March 2026 which provided further information.

6. In it she described the property as a first floor self-contained flat within a block of two flats forming one side of a "semi-detached" house. The other three flats are owned by the Applicant and let to tenants.

7. The Land Registry Property Register shows Georgina Hibbert as registered proprietor of the Property. Georgina Hibbert died on 13 December 2007. In her will, dated 28 November 2006, she appointed Albert Hibbert as executor and Vicky Sole as the substitutional executor.

8. Vicky Sole obtained probate to Mrs Hibbert's estate on 2 October 2008. Albert Hibbert (the deceased's son) was the sole beneficiary of the will. At some time thereafter the Respondent, Albert Hibbert, changed his name to Peter Oldaker. No further information has been supplied to the Tribunal but the Applicant has recognised that the Respondent Peter Oldaker is/was formerly (also) known as Albert Hibbert.

9. Although the Lease requires that formal notice of any change in ownership of the Property, including a change occurring following a death, be sent to the Applicant with a registration fee, no notification was sent to the Applicant after Mrs Hibbert's death. The Applicant's records show Georgina Hibbert as the leaseholder.

10. The bundle contains a letter from Plymouth City Council addressed to Thompson & Jackson solicitors, dated 17 April 2007 [129], which refers to a duplicate notice of assignment [122]. The official copies of the title to the leasehold property, show that Mrs Hibbert was registered as proprietor of the Property on 2 April 2007 and the price paid for the Property on 16 March 2007. That notice of assignment given to the Applicant recorded that Mrs Hibbert became the owner of the Property on that date.

11. The Tribunal received a hearing bundle of 149 pages. References to numbers in square brackets in this decision are to the electronically numbered pages of the bundle.

12. During the hearing the Applicant was represented by Counsel, Andrew Gibbs-Ripley. Ms Joanne Lake and Mrs Nicola Hext from the Applicant, were present. The Respondents, Ms Sole and Mr Oldaker appeared in person.

The Hearing

13. Mr Oldaker explained to the Tribunal at the beginning of the hearing that he suffers with mental health difficulties and said he is on suicide watch. He said he has difficulty reading the papers as it upsets him. He had brought some papers with him which did not appear to be a complete copy of the Bundle. The Applicant provided the Respondents with a paper copy of the hearing bundle. Mr Oldaker suggested that he had expected that someone from Plymouth City Council would assist him during the hearing but said that no-one had turned up. Ms Sole acknowledged she understood the importance of attending the hearing but explained that she had another appointment later that morning.

14. Prior to the formal submissions the Judge explained what would happen. She also explained that the reason Ms Sole is a named Respondent, is because she obtained a grant of probate to the late Mrs Hibbert's will but did not transfer the property to Mr Oldaker. It was her duty as executor to do so. Furthermore, the Lease contains a requirement for registration of any change in the ownership of the Property by serving notice on the Applicant accompanied by a fee. As the only person who can legally transfer the Property to Mr Oldaker she has "an interest" in it.

15. The Tribunal was initially unsure how much of the proceedings Mr Oldaker might be able to follow. The Tribunal encouraged him to ask for clarification from the Tribunal if he needed it and he addressed the Tribunal on more than one occasion during the hearing so it was satisfied that he was able to participate and did participate.

16. The Tribunal told the parties that the application is for an order that a breach of lease has occurred and explained that was the only matter which the Tribunal could consider under s.168 of CLARA. It asked the Applicant to identify the breaches and when these occurred.

17. Mr Gibbs Ripley (Counsel) identified five breaches which he said fell into two distinct groups and he said that the first three should be considered together. He broadly categorised these breaches as obstructions, alterations and nuisance.

18. Counsel said the three breaches were identified by the Applicant in or about June 2023, when it was attempting to carry out some external works to the block. He referred some notes made by Roy Harris, a contracts works supervisor in September 2026 which broadly confirmed that rectification and decorative works had been carried out to an acceptable standard [136].

19. Counsel suggested that the three breaches were subsisting between June 2023 and September 2026.

20. The fourth breach is the failure on the part of the Respondent(s) to notify the Applicant (as freeholder) of the change in ownership following the grant of probate. Counsel referred to paragraph 15 of the Fifth Schedule to the Lease [52]. That paragraph requires that the lessee give notice in writing to the freeholder, within 21 days of any transfer of ownership including "a grant of probate" and pay a registration fee of £25 and provide a copy of the relevant transfer document.

21. Neither Respondent suggested that this was done after Ms Sole obtained a grant of Probate.

22. Counsel linked this breach with the failure to transfer the legal estate by Ms Sole as executor.

23. During the hearing Mr Oldaker intermittently referred to having seen an acknowledgement of a notice by the Applicant. Mr Oldaker suggested that he has spoken to the Land Registry and that he had sent the papers and paid some money but had received nothing.

24. In response to questions, Miss Sole confirmed that she had not signed a document to transfer the ownership of the Property. She did not seem to be aware that by obtaining a grant of probate to Mrs Hibbert's estate she became the owner of the Property and the only person who could transfer it to a third party. She did not appear to understand, at the time, that she had a legal duty as executor to administer the estate of the deceased.

25. The fifth breach identified by Counsel relates to the failure by the Respondent to pay the service charges demanded by the Applicant. Counsel referred the Tribunal to paragraph 15 of the Fifth Schedule to the lease [52]. He said that the current amount outstanding on 29 September 2026, was shown on the statement in the bundle [145 – 147]. It was established that the figure shown at the end of the statement includes costs awarded to the Applicant when the injunction order was made.

26. Counsel said that the Applicant had notified the Respondent about planned maintenance works in March 2026 [115]. He said that those costs had been properly incurred and remained outstanding. The arrears of service charges are not reducing and he suggested that there is no prospect of the arrears being settled.

27. Mr Oldaker said that he is making regular payments to the Applicant and is prepared to agree a payment schedule to reduce and settle the arrears. Ms Lake identified that the arrears include the costs incurred by the Applicant in obtaining the injunction.

28. Mr Oldaker also suggested that the shared path did not need to be shared because the tenant of the other flat within his block did not use it. The Judge explained to him that she was unable to consider such a matter as part of these proceedings.

29. Mr Oldaker told the Tribunal that he had recently spoken to someone at the land registry and paid money to them to transfer ownership. Ms Lake confirmed that she had not signed any transfer form. She expressed her willingness to complete her obligations as executor.

The Law

30. Section 168 (1) prevents a landlord under a long lease of a dwelling from serving a forfeiture notice under section 146(1) of the Law of Property Act 1925 in respect of a breach by a tenant of a covenant or condition in the lease which is an essential pre-requisite unless the breach has been determined by an appropriate court or tribunal or the tenant has admitted that a breach has occurred.

31. The Applicant, in these proceedings has applied to the Tribunal for an order determining that Mr Oldaker as tenant has breached the terms of his lease.

Reasons for the decision.

Breaches 1 - 3

32. These three breaches relate to physical works undertaken to the Property or actions taken by Mr Oldaker which the Tribunal were told adversely affected his neighbours, causing a nuisance. These breaches were first identified by the Applicant in 2023. The Applicant notified the Respondent as confirmed by the evidence in the bundle, provided to the Tribunal, Mr Oldaker carried out works to remedy the breaches. The bundle contained a copy of a statement made by Roy Harris on 9 October 2024 [70].

33. Roy Harris, a Contracts Works Supervisor, investigated the problems at the Property when the Applicant could not gain access to inspect it because the pathway was obstructed by a locked gate. Following a visit to Mr Oldaker Mr Harris identified that unauthorised alterations had been made to the Property, t it had been painted blue and a locked gate was obstructing access. At that time the Applicant also undertook formal consultation in relation to proposed works to the block.

34. Following the Applicant obtaining an Injunction in July 2025, Mr Harris appears to have worked with Mr Oldaker and by 29 September 2026, he recorded that Mr Oldaker had "rectified all the raised issues accountable to the Planned Maintenance". He also recorded "With this I have verbally confirmed that the Planned Maintenance which was due to this property, has now been met by Mr Oldaker and any costs will be met solely by himself for the works he has carried out at 427 +729 Budshead Road" (sic) (*but we have concluded this was a typo and he intended to refer to 427 +429)* [138].

35. Counsel referred to Mr Harris's note [138] as evidence of when the three breaches were rectified.

36. The Tribunal is therefore satisfied and finds that the Respondent in breach of covenants in the lease between **June 2023 and September 2026** by blocking a shared access; causing a nuisance and by storing bulky items within his garden cand carrying out unauthorised alterations and decoration to external parts of the block within which the Property is located.

Breach 4

37. This was the failure of either Respondent to comply with its obligation to notify the Applicant that Probate had been granted. It occurred 21 days after the date Probate was granted to Miss Sole on 2 October 2008 [40]. The leaseholder is obliged to give notice within 21 days so the breach commenced on 23 October 2008 and continues.

38. The bundle contains copies of some partly completed Land Registry forms [123 - 125]. the Tribunal has identified these as an ID1, a form which must be completed to identify any person for whom evidence of identity is required and an AS1 (referred to below). Both Respondents will need to complete an ID1 and submit it to the Land Registry with an assent (AS1) signed by Miss Sole, transferring the lease to Mr Oldaker. Both Respondents would need to supply evidence of identity with each ID1 form. If this is done the Land Registry could register the change to the title.

39. The bundle contains a letter, addressed to Mr Oldaker ,dated 1 April 2026 ,from the Land Registry which states "as discussed the applications forms are enclosed" and contains an address to which the completed application should be sent. This is evidence which supports Mr Oldaker's submissions, made verbally during the hearing, that he has had conversations with the Land Registry. The Tribunal whilst accepting that he did but believes that the fees to which he referred were for copies of the existing registers of title and not related to the transfer of the Property.

40. The Tribunal decided that it would be unhelpful and distressing for Mr Oldaker if it were to question him about his conversations with the Land Registry. For that reason, it did not attempt to extract further information from him. It was satisfied that he is aware that he needs to

take some action, but he will need help to transfer the ownership of the Property into his name.

41. The Tribunal accepts that earlier this year, Mr Oldaker attempted to progress the transfer or the Property into his name. However, in reliance on what Ms Sole told the Tribunal, which was that she has not signed any forms, the Tribunal is satisfied that no formal application has yet been made for the transfer of the Property. It believes that Mr Oldaker was unaware that Ms Sole would have to sign the AS1 and also provide evidence of her identity by completing an ID1 form.

42. The Tribunal finds that Mr Oldaker is in breach of the obligation to given notice of the effective transfer of the Property into the name of the executor Miss Sole on the grant of probate and has been since **23 October 2008.** Such a notice could be given now and the relevant fee paid which would remedy this breach. Until that notice is given the breach continues.

43. Whilst not a matter for this Tribunal, Miss Sole should have transferred the lease to Mr Oldaker following receipt of the grant of probate. Both parties should try to ensure that Property is transferred into Mr Oldaker's name. Once this is done, a notice of transfer must be given to the Applicant (landlord) within 21 days to comply with the covenant in the lease. The Respondent might wish to keep the Applicant informed of their progress so that further breaches can be avoided.

Breach 5

44. This is the failure by the Respondent to pay service charges.

45. The Tribunal is satisfied that the Respondent as lessee, is obliged to pay service charges. Clause 3 of the Lease is a covenant by the lessee to observe and perform the obligations in the Fifth Schedule to the lease [46]. Paragraph 15 of that schedule [52] contains an obligation for the lessee to contribute one half of the costs and expenses incurred by the lessor in carrying out its obligations in the Sixth Schedule, which include keeping and maintaining the exterior of the block and the roof in good and tenantable repair and condition [55]. The arrears at the end of September 2026 total £5,413.33 [149].

46. The Applicant provided the Tribunal with evidence of the amount of the service charge outstanding at the end of September 2026, in a statement which records charges and payments between April 2018 – September 2026 [145 – 147]. The statement shows that annual service charges of between £145 and £449 were invoiced in April.

47. Although Mr Oldaker has made regular monthly payments, the sums paid between 2018 and 2024 were insufficient to reduce his liabilities. He currently pays £90 per month which remains insufficient because of the addition to the account of legal costs of £4,587.50 added following the Applicant obtaining the injunction.

48. The Tribunal finds that Mr Oldaker is in breach of his obligations to pay service charges to the Applicant. The amount exceeds the sum

prescribed in section 167 of CLARA and the breach has subsisted between April 2008 and September 2026 and is continuing.

49. **Whilst not part of its reasons for making this decision** the Tribunal has identified that the bundle also contains copies of some correspondence between different departments of the Applicant which show why it has been difficult for the Applicant to set up a payment plan. Mr Oldaker does not have a bank account, which impacts on the period of any proposed plan that the Applicant can offer; in addition, and the Applicant has been unable to put a payment card into Mr Oldaker's name because of his failure to deal with the transfer of the lease into his name [120]. This underlines the importance of the Respondent's dealing with the transfer of the Property into Mr Oldaker's name and notifying the Applicant as soon as this has been done.

50. Copies of correspondence between the Applicant and Plymouth City Council's Housing Options Team reveal that Mr Oldaker is clearly vulnerable and could benefit from appropriate advice and support [129 - 133]. This was apparent to all in attendance at the hearing. The Tribunal is grateful to those parties for their assistance during the hearing.

Appeals

1. A person wishing to appeal this decision to the Upper 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. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.

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.