



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)<sup>1</sup> &  
IN THE COUNTY COURT at  
Gloucester and Cheltenham County  
Court sitting at Havant Justice  
Centre, Elmleigh Road, Havant PO9  
2AL**

**Tribunal reference** : **CHI/23UE/LSC/2020/0054**

**Court claim number** : **G2QZ86D9**

**Property** : **Flat 11,9 Kiln Close, Gloucester,  
GL1 1GH**

**Applicant/Claimant** : **Greyfriars Quarter Community  
Interest Company (Kiln Close)**

**Representative** : **SLC solicitors**

**Respondent/Defendant** : **Paul Anthony Davidson & Lyn  
Davidson**

**Type of Application** : **Transferred Proceedings  
Service charges, interest and costs**

**Tribunal members, and  
In the County Court** : **Judge Tildesley OBE**

**Venue and Date of  
Hearing** : **11 August 2020 by telephone  
Havant Justice Centre**

**Date decision  
published** : **19 August 2020  
Decision given at the end of the  
hearing**

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**DECISION**

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## **Summary of the decisions made by the FTT**

1. The following sums are payable by the Defendant to the Claimant by 14 September 2020:
  - (i) Service charges: £559.62

## **Summary of the decisions made by the County Court**

2. The following sums are payable by the Defendant to the Claimant by 14 September 2020:
  - (i) Interest of £7.49
3. The following sums are payable by the Claimant to the Defendant by 14 September 2020:
  - (i) £224.02 (Counter Claim)
  - (ii) Court fees of £25
  - (iii) Interest of £7.49

## **Background**

4. The Claimant issued proceedings issued against the Defendant on 24 March 2020 in the County Court Business Centre under claim number G2QZ86D9. The Defendant filed a Defence and Counter Claim dated 1 April 2019. The proceedings were then transferred to the County Court at Gloucester and Cheltenham and then to this Tribunal by the order of District Judge Singleton dated 15 May 2020.
5. On 25 June 2020 Judge Tildesley directed that a Tribunal Judge sitting first in that capacity and then as a Judge of the County Court would determine all issues arising in the Claim F2QZ7W1Z. For the purposes of the County Court proceedings the claim was allocated to the Small Claims Track.
6. Judge Tildesley also directed that the hearing would take place on 11 August 2020 at Havant Justice Centre but by means of telephone conference in view of the current Coronavirus Pandemic.
7. On 11 August 2020 Mr Christopher Green, solicitors' agent, appeared for the Claimant. Mr Paul Anthony Davidson attended in person for the Defendant.

8. Judge Tildesley had before him on 11 August 2020: the Claim, Defence and Counter Claim, Reply to Defence, the Defendant's clarification of case including a list of documents dated 6 May 2020, the Defendant's application under Paragraph 5A Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("2002 Act) and the Claimant's reply to the Defendant's clarification of case.
9. Judge Tildesley decided that as Tribunal Judge he would determine the following issues: liability to pay service charges, and administration charges dated 19 February 2019 and 29 March 2019.
10. Judge Tildesley decided that as Judge of the County Court exercising the jurisdiction of a District Judge he would determine the Counter Claim, interest and costs including the application under paragraph 5A of Schedule 11 to the 2002 Act.

### **The Tribunal Determination**

11. The Defendant holds a leasehold interest in the property for a term of 250 years from 1 July 2014. The interest is subject to the terms of a lease dated 30 January 2015 made between Linden Limited and the Defendant. The Claimant is not the freeholder of the property but a third party to the lease and is liable under the lease to perform the covenants of the management company. The Tribunal understands First Point Property Services act as the Claimant's Managing Agent.
12. The relevant parts of the lease are as follows:
  - a) Schedule 4 Part A Part 2 Clause 1 to the lease: the lessee covenants to pay the service charge payable under Schedule 4 Part B.
  - b) Schedule 4 Part A Part 2 Clause 3.1: the lessee covenants to pay to the Management Company interest at the Prescribed Rate (4 per cent above base rate) on unpaid sums.
  - c) Schedule 4 Part A Part 2 Clause 14.3: the lessee covenants to pay the Management Company on demand all reasonable and proper costs including professional fees with VAT in connection with the recovery of arrears of the Variable rentcharge or any other sum payable under this deed.
  - d) Schedule 4 Part B Part 3 sets out the Estate Services that the Management Company covenants to provide to the lessees under the lease.

- e) Schedule 4 Part B Part 1 definitions: Accounting period 1 July in any year to and including 30 June.
  - f) Schedule 4 Part B Part 1 Clause 5.1: During each accounting period the lessee shall pay by quarterly instalments in advance on the agreed quarter days a reasonable sum to be notified in writing by the Management Company towards service charge for that accounting period.
  - g) Schedule 4 Part B Part 1 Clause 5.2: if the management company does not notify the Lessee of the sum to be paid, the lessee shall continue to pay the sum which it paid under this paragraph during the previous accounting period until it has been notified of the sum paid; and on notice being given the Lessee shall pay any balance due to the Management company which it would have paid had it been notified of the sum to be paid before the beginning of the Accounting period.
  - h) Under Clause 11 Service of Notices, Clause 11(a) states in the case of service on the lessee if addressed by or on behalf of the lessor the Management Company or the Developer to the lessee by name or by the designation of the Lessee and sent by recorded delivery service or left for the Lessee at the property.
13. The Defendant accepted his liability to pay the service charges of £13.27 and £146.46 for the period 1 July 2019 to 30 September 2019; insurance of £241.18 for the period 1 July 2019 to 30 June 2020, and service charges of £13.27 and £146.46 for the period 1 January 2020 to 31 March 2020. This made a total of £560.64.
  14. On 24 October 2019 the Defendant had paid the sum of £400.19 in respect of the service charges and insurance for the period of 1 July 2019 to 30 September 2019/30 June 2020. On 15 February 2020 the Defendant had paid the sum of £159.73 in respect of the service charge for the period 1 January 2020 to 31 March 2020. The Claimant, however, decided not to accept the payments and returned the sums to the Defendant.
  15. Mr Green for the Claimant acknowledged that the service charges of £13.27 and £146.46 for the period 1 October 2019 to 31 December 2020 were offset by balancing charges credited to the Claimant's account which left the Defendant with a balance of £1.02.
  16. **The Tribunal determines by consent that the Defendant is liable to pay £559.62 (£560.64- £1.02) in respect of service charges for the periods 1 July 2019 to 30 September 2019 and 1 January 2020 to 31 March 2020 and for insurance for the period 1 July 2019 to 30 June 2020.**

17. The Tribunal notes that the Defendant made a part admission of the claim in sum of £559.92 and offered to pay it on 2 April 2020.
18. The Defendant disputed his liability to pay two administration charges of £60 each dated 19 February 2019 and 31 March 2019 respectively.
19. The administration charges related to the non-payment of the service charges for the period 1 July 2018 – 30 September 2018 and 31 December 2018. The Claimant states that it sent a reminder for payment on 11 September 2018. The Claimant relied on Schedule 4 Part A Part 2 Clause 14.3 of the lease as its authority to levy administration charges.
20. The Defendant stated that he did not receive invoices for the service charges in question in July 2018. Further the charges did not appear in the statement dated 31 July 2018, the email dated 3 August 2018, the letter dated 11 September 2018 and the statement dated 11 September 2018 which were sent by First Port Property Services, the Claimant's Managing Agent.
21. The first time that the Defendant became aware of the service charges for July 2018 was in a letter sent to him from First Port Property Services on 19 February 2019 which attached a statement showing the received charges and the administration charge. There were no invoice numbers referred to on the statement. As soon as the Defendant received the letter he telephoned First Port and asked for copies of all outstanding invoices and stated that if the invoices were valid he would pay them. Unfortunately, First Port did not send the invoices.
22. The Defendant also received another letter on 19 February 2019 from Natalie Griffiths, Property Manager for First Port which said:

“Following a review of your scheme this has resulted in the late issuing of your service charge demands.

You may find enclosed quarterly service charges for the periods 01/10/18-31/12/18, as well as for the period 01/01/19-31/03/19. These invoices will bring your account up to date and your next service charge invoice will be issued in time for April 2019.

Please be assured that we understand we are asking for more than one set of service charges to be paid, so please don't hesitate to contact us if you wish to talk this through.

We can only express our sincere apologies for any confusion or inconvenience we may have caused you and can reassure you that steps have been taken to ensure this does not happen again”.

23. The Defendant eventually received the relevant invoice for the July 2018 service charge from the Claimant's solicitors as a file attachment on 2 May 2019. The invoice for the service charges due in July 2018 was dated 17 January 2019 with a due date of payment of 17 February 2019. The first administration charge was dated 19 February 2019, some two days after the due date for payment of the invoice.
24. The Defendant paid the sums owed on the outstanding service charges on 3 May 2019 the following day after receiving the invoices from the solicitors. The payment was accepted. The Defendant did not include payment of the two administration charges.
25. The Defendant also maintained that he did not receive a Summary of Tenant's rights and Obligations in respect of the administration charges. The Claimant's solicitors said that the Summary of Tenant's Rights and Obligations were included in the invoice documentation. Duplicate copies of which were provided by the Claimant's solicitors.
26. The Claimant blamed the Defendant for the non receipt of the relevant invoices. The Claimant said that the Defendant had signed up to e-billing and had provided the Claimant with an email address to which the Claimant said it sent the invoices. The Claimant asserted in its statement of case that it was the Defendant's responsibility to ensure the correct address was given for the service of invoices. The implication being was that the Defendant had not provided the Claimant with a current email address. The Claimant exhibited an email from its solicitors to its statement of case dated 23 July 2019 which said:

“We have reviewed this matter at length with our Client, and attach the documents that were sent to you by post, in addition to the failed emails that our Client sent to you. As it is your responsibility for ensuring our Client has the correct address for service of documents, and you failed to update our Client with your new email address, our Client is not at fault. There is absolutely no obligation on our Client's part to be chasing you for payment by telephone.

We have re-checked the invoicing dates and do take your point that most invoices were not raised until January and February of this year. We have therefore adjusted your interest accordingly, and have re-calculated this taking into account your payment on 8th May. To clarify, your interest is now £7.49, and is charged up until 8th May.

Your payment of £998.56 has been credited to our file, however, the Admin Charges and legal costs do remain outstanding”.

27. The Defendant disagreed with the Claimant's assertions regarding the email address. The Defendant stated that he had not changed his email address. He held two email addresses. The Defendant checked the email address for the e-billing and observed that he had received just

two emails from First Port: one on 2 July 2018 regarding the billing starting that he would receive an email notifying him when an invoice was due 28 days prior to the invoice due date, and the second on the 8 August 2020 stating that his invoice was ready to view on line. The Defendant also tested the email address and found that there was a problem with it which First Port would have been aware of because it would have received the same error message.

28. The Tribunal finds the following facts:

- a) The Claimant's reason for levying the administration charges concerned the non-payment of the half yearly service charge in advance of £25 for the period 1 July 2018 to 31 December 2018, and the quarterly service charge of £163.13 for the period 1 July 2018 to 30 September 2018.
- b) The Claimant accepted that the invoice for the disputed service charges was dated 17 January 2019 with a payment date of 17 February 2019 (invoice number 1036494).
- c) The earliest date that the demand for the disputed service charges could have been sent was the 17 January 2019 which undermined the Claimant's assertion that it sent a reminder on 11 September 2018 before issuing the administration charges for the purported arrears.
- d) The first administration charge was dated 19 February 2019 just two days after the due date for payment of the disputed service charges on 17 February 2019. The lease states that in respect of interest, it becomes payable if the relevant sum remains unpaid for 14 days on which the sum was due. In the Tribunal's view a minimum period of 14 days should be allowed after the due date for payment before an arrears letter is sent.
- e) The Claimant adduced no evidence that it had sent either by email or by post the disputed invoice (number 1036494) to the Defendant before 17 January 2019.
- f) The Claimant's managing agent admitted that there were delays with the issue of demands for service charges in respect of properties on the estate (see the letter of Natalie Griffiths, Property Manager dated 19 February 2019).
- g) The Claimant's managing agent did not supply copies of the disputed invoice when requested to do so by the Defendant on 19 February 2019.

- h) The Defendant was first provided with a copy of the disputed invoice when it was sent by the Claimant's solicitor on 2 May 2019.
  - i) The Defendant paid the outstanding sums on 3 May 2019. The Defendant's payment had been accepted and not returned to him.
  - j) The Claimant's assertion that it had provided the Defendant with a Summary of Tenant's Rights and Obligations at the time of demanding the administration charges lacked conviction. On the evidence the Tribunal is satisfied that the Defendant was first supplied the Summary on 2 May 2019.
29. The Tribunal concludes from the facts found that during the period the Claimant's managing agent experienced significant problems with its systems for managing the service charge accounts for the Estate on which the property was located. The result was that service charge demands were not issued in accordance with the dates set out in the lease. The Tribunal is satisfied that the demand for the service charges for the periods 1 July 2018 to 31 December 2018, and for the period 1 July 2018 to 30 September 2018 were not sent to the Defendant until 2 May 2020. At the time the Claimant said that it had issued the administration charges on 19 February 2019 and 31 March 2019 the Defendant was not liable to pay the said service charges. The Tribunal, therefore, holds that the Claimant had no grounds to make charges for debt collection on service charges which were not due. **The Tribunal decides that the administration charges of £60 each imposed on 19 February 2019 and 31 March 2019 were not reasonable and that the Defendant was not liable to pay them.**
30. The Tribunal adds that it believes the Defendant's statement that he did not receive the Summary of the Tenant's Rights and Obligations when he received copies of the administration charges.
31. The Tribunal observes that under Clause 11 of the Lease: "Service of Notices" the Claimant is required to address all Notices under the lease to the lessee by name or by the designation of "the Lessee" and sent by the recorded delivery service or left for the lessee at the property. Clause 11 would apply to demands for service charges and administration charges under the lease. The Claimant adduced no evidence that it had complied with the requirements of the lease for the service of such demands.
32. Mr Green for the Claimant sought to rely on the wording of Schedule 4 Part B Part 1 Clause 5.2 to justify the levying of administration charges. This clause imposed an obligation on the Lessee to continue to pay the sum under the previous accounting period if the management company did not notify the Lessee of the sum to be paid. Mr Green, however,



conceded that the contractual provision was subject to the statutory protections given to lessees in respect of lawful demands and the provision of the Summary of Tenants Rights and Obligations. In this case the Tribunal found that the Claimant did not comply with the statutory requirements for the protection of lessees, and, therefore, Schedule 4 Part B Part 1 Clause 5.2 had no application to the facts of this case.

## **The Court's Decision**

### **The Claim: Interest**

33. The Claimant applied for interest on the sum due at the contractual rate of 4 per cent above base rate. The Claimant in its "Response to the Defendant's Clarification" explained at [6] that it had returned the Defendant's payments of 14 October 2019 and 15 February 2020 because they did not reflect the full amount owing to include the administration charges and legal fees which had been incurred due to the Defendant's failure to pay the Service Charge arrears over a prolonged period of time. The Court observes that the Claimant accepted the payment of the 2 May 2019.
34. The Claimant at [14] went onto say that "it is admitted that the interest was recalculated but as detailed in the Reply to Defence and it was still payable under Schedule 4, Part 2, Clause 3 in particular Clause 3.2 of the Lease in addition to under s.69 County Courts Act 1984". Mr Green was unable to help as what precisely was meant by the Claimant's statement at [14].
35. The Court decides that the Claimant was bound by its admission in its solicitor's letter of 23 July 2019 which recalculated the interest at £7.49 to 8 May 2019. In view of the Tribunal's decision that the Defendant is not liable to pay the administration charges, and that the Claimant's legal costs have been claimed as part of the contractual costs. **The Court orders the Defendant to pay the Claimant interest of £7.49.**

### **The Counter Claim**

36. The Defendant made a counter claim of £224.02. This represented the overpayment of invoice number 974438 which had been settled on 8 August 2018.
37. The Claimant in its "Reply to the Counter Claim" dated 16 April 2020 admitted that the Defendant had overpaid but that the amount of overpayment was £209.02.

38. The Court considered the “Account Reconciliation” prepared by the Defendant (document 4 in the Defendant’s list of Documents dated 7 May 2020). The Court is satisfied that the amount of overpayment is £224.02. Mr Green made no representations disagreeing with the Defendant’s calculation.
39. **The Court Orders the Claimant to pay the Defendant the sum of £224.02.**
40. The Defendant had made a Claim for Interest which the Court determined at £7.49. Mr Green accepted that the Defendant was entitled to interest but considered that the amount of £7.49 represented a high rate of interest. Before awarding the amount of interest the Court performed a calculation which suggested that the rate of interest was around 3 per cent. The calculation was based on the fact that the debt had been outstanding since 2 May 2019.

### **Costs**

41. The Claimant produced a schedule of costs which had been sent to Havant Justice Centre and to the Defendant on 4 August 2020. The total of costs claimed was £4,649.60 which included the costs included in the Claim Form
42. The Claimant relied on Schedule 4 Part A Part 2 Clause 14.3 and Clause 3(a) of the lease to substantiate its assertion that it was entitled to contractual costs. According to Mr Green it followed that the Court should exercise its discretion to order costs to reflect the contractual position. Also, the right to claim contractual costs displaced the provisions of CPR 27.14 which limit the costs in the Small Claims Track (*Chaplain Ltd v Kumari* [2015] EWCA Civ 798).
43. The Court acknowledged that the Claimant had a contractual right to its costs under the lease. The Court, however, pointed out that the Defendant had made an application under paragraph 5A, schedule 11 of the 2002 Act.
44. Paragraph 5(A) enables a tenant of a dwelling in England to apply to “the relevant court or tribunal” (as explained in the table to para. 5(3)(b)) for an order reducing or extinguishing the tenant’s liability to pay a particular administration charge in respect of litigation costs incurred or to be incurred. By para. 5(2) the relevant court or tribunal may make “whatever order on the application it considers to be just and equitable”.
45. The effect of an application under paragraph 5A is set out in the decision in *Avon Ground Rents Limited v Sarah Louise Child* [2018] UKUT 204 (LC) at [58]

“Had the para. 5A jurisdiction been available to the Respondent in the litigation before the County Court and the FTT in the present case, it may well be that those bodies would have considered it “just and equitable” to reduce the Respondent’s contractual liability to pay the legal costs that the Appellant had incurred in relation to that litigation to an amount which was proportionate to the sums in dispute, the issues involved and the level of representation appropriate to deal with those matters (and not simply by reference to whether costs had been incurred reasonably and were reasonable in amount). We recognise that this would have affected an alteration to the parties’ contractual position, but that is the very purpose of the para. 5A jurisdiction”.

46. The cause of this dispute is the inefficient administration of the service charge accounts by the Claimant’s managing agent. On 25 February 2019 the Defendant first became aware of the potential problems with the service charge account for the property. From that date the Defendant has admitted his liability to pay service charges provided the Claimant supplied him with copies of the lawful demands. As soon as he received the lawful demands the Defendant paid the sums owing. The last two payments of £400.19 on 24 October 2019 and £159.73 on 15 February 2020 were returned to him even though proceedings had not yet been taken out. The Defendant made a part admission in the sum of £559.92 which is 30 pence above the amount of the judgment against him. The Defendant has also the benefit of a judgment in his favour which represented the amount he overpaid in May 2019 when he was trying to resolve this dispute. The effective dispute in this case concerned the two administration charges of £60 each (a total of £120). The Claimant’s authority to make these charges depended upon whether the Claimant has incurred expenses in collecting arrears. On the Claimant’s own evidence, the invoice for the disputed service charges was not issued until 17 January 2019 with a payment date of 17 February 2029. The administration charge was sent two days later which was clearly an error. The Claimant’s solicitors were aware of the administrative shortcomings of the managing agents but still pursued legal action, and incurred costs of £4,649.60 for an amount of £120. This dispute should never have come to court, and the Claimant should have accepted the Defendant’s offer to settle.
47. The Court finds for the reasons set out below that it is just and equitable to make an order under paragraph 5A schedule 11 of the 2002 Act extinguishing the Defendant’s liability to pay the contractual costs of £4,649.60. The reasons are as follows:
  - a) The Claimant’s conduct in pursuing a Claim which was caused by the inefficiencies of its managing agent, and which the Claimant knew or should have known had no firm foundation in the facts and in the law.

- b) The Defendant throughout the dispute has been willing to pay what has been lawfully demanded and has demonstrated his intention by making payments of the sums properly due.
- c) The judgment in favour of the Claimant is no more than the offer made by the Defendant to settle the dispute.
- d) The costs incurred by the Claimant are unreasonable and disproportionate to the real sum in dispute of £120.
- e) The Claim was allocated to Small Claims.

- 48. **The Court makes no order for costs against the Defendant.**
- 49. The Court would have made the same Order if it had exercised its discretion to order costs under section 51 of Senior Courts Act 1981 and applied the principles under CPR 44.2 of the Civil Procedure Rules.
- 50. The Defendant requested costs of £25 in respect of the court fee paid for bringing the Counter Claim. The Defendant was wholly successful with his claim. CPR 27.14 permits an order of court fees.
- 51. **The Court orders the Claimant to pay costs of £25 to the Defendant.**

## **Rights of appeal**

### **Appeals in respect of decisions made by the Tribunal**

A written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case. The application must be made as an attachment to an email addressed to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk).

The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

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.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

### **Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court**

An application for permission to appeal may be made to an appeal judge in the County Court since No application was made to the Judge at the hearing.

Please note: you must in any event lodge your appeal notice within 21 days of the date of the decision against which you wish to appeal.

Further information can be found at the County Court offices (not the tribunal offices) or on-line.

### **Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court and in respect the decisions made by the FTT**

You must follow **both** routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues by proceeding directly to the County Court.