FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT at Watford, sitting at Cambridge County Court

Tribunal reference	**:**	**CAM/26UE/LWS/2020/0001**
Court claim number	**:**	**F1QZ4Y1R**
HMCTS code (audio, video, paper)	**:**	**A: BTMMREMOTE**
Property	**:**	**1 Mayfield Court, London Road, Bushey, Hertfordshire WD23 2NN**
Applicant/Claimant	**:**	**Hightown Housing Association**
Respondents/Defendants	**:**	**1. John Anthony Peter Davern** **2. Siobhan Davern**
Proceedings heard together	**:**	**Transferred county court proceedings - liability to pay service charges**
Tribunal members	**:**	**Judge David Wyatt** **Sarah Redmond BSc Econ MRICS**
In the county court	**:**	**Judge David Wyatt**
Date of decision	**:**	**2 March 2021**

DECISION

Those parts of this decision that relate to County Court matters will take effect from the "**Hand Down Date**" which will be:

(a) If an application is made for permission to appeal within the 28-day time limit set out below – 2 days after the decision on that application is sent to the parties; or

(b) If no application is made for permission to appeal, 30 days from the date that this decision was sent to the parties.

Covid-19 pandemic: description of hearing

This has been a remote audio (telephone) hearing. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents we were referred to are in the bundle of 119 pages prepared by the Applicant and the e-mail from the first Respondent at 22:38 on 25 February 2021, the contents of which we have noted.

Summary of the decisions made by the tribunal

1. The following service charges are payable by Mr and Mrs Davern to Hightown Housing Association by a date to be confirmed following hand down:

    a. £1,851.51 for 2018/19; and

    b. £1,182.72 as a partial contribution towards the estimated costs for 2019/20.

Summary of the decisions made by the court

2. The following sums are payable by Mr and Mrs Davern to Hightown Housing Association by a date to be confirmed following hand down:

    a. total ground rent of £460 for 2018/19 and 2019/20; and

    b. the court issue fee of £185.

Reasons

Service charge proceedings

3. The Applicant sought and following a transfer from the county court the tribunal was required to make a determination under section 27A of the Landlord and Tenant Act 1985 (the "**1985 Act**") as to whether service charges are payable.

Procedural history

4. On 7 October 2019, the Applicant issued the county court proceedings against the Respondents, claiming £3,494.23 for unpaid ground rent and service charges, and the court issue fee of £185. The Respondents filed a revised defence on 24 January 2020.

5. The county court proceedings were transferred to the tribunal by Deputy District Judge Bastin by order dated 6 March 2020. Under section 176A of the Commonhold and Leasehold Reform Act 2002, the court may transfer to the tribunal so much of the county court proceedings as relate to the determination of whether the Respondents are liable to pay the relevant service charges, because the tribunal would have jurisdiction under section 27A of the 1985 Act to determine this.

6. On 6 November 2020, the tribunal received copies of the transfer order and other documents from the proceedings. On 10 November 2020, a procedural judge gave case management directions based on those documents. The Respondents failed to comply with those directions and did not make any application for more time. After the Respondents failed to send their case documents to the Applicant by 18 December 2020 as directed, the tribunal set an extended deadline of 15 January 2021 for compliance or any application for more time, warning (again) that if they failed to respond they could be barred from taking further part in the proceedings and the tribunal could determine the relevant issues against them. The Respondents did not respond.

7. There was no inspection. The tribunal had directed that it considered an inspection was not required but any relevant photographic evidence would be considered. Neither party produced photographs. The tribunal had directed that, to seek to save time, costs and resources, the judge at the substantive hearing would deal with all the issues in the proceedings, performing separately the role of tribunal judge and then the role of judge of the county court. No party objected to this. Accordingly, Judge David Wyatt presided over both parts of the hearing, sitting with Mrs Redmond for the matters before the tribunal and sitting alone, as a judge of the county court (at district judge level) for the matters before the county court. The relevant parts of this decision serve as the reasons for the tribunal decision and the reasoned judgment of the county court.

8. At the hearing at 10am on 26 February 2021, the Applicant was represented by Lindsay Fenn, home ownership team leader. The first Respondent, Mr Davern, attended in person and applied for an adjournment. Shortly before 11pm on the night before the hearing, he had sent an e-mail to the tribunal (but not the Applicant) saying he was unable to attend the hearing. His e-mail said he had tested positive for Covid on 22 December 2020 (producing wording which he said was from a text message indicating that he had the virus on that day), paramedics had been called to his home on 28 December 2020, he had spent most of January 2021 recovering, his left arm was extremely weak and he was tired all the time. At the hearing, he told us that he was also a heart attack patient, had been ill before the test and did not return to work until the third week of January. He said he was completely overwhelmed, the hearing had only been brought to his attention yesterday and he could not work beyond 2-3pm. He said that

another month would not give him enough time, and he needed 2-3 months. When we tested this, he said that he could prioritise and a month or 21 days should be enough. He said that no-one else but him (not Mrs Davern or his office manager or anyone else) could deal with this. He felt he had to ask for more time and explain why, but if we decided we should proceed with the hearing he would abide by our decision.

9. I refused the application for an adjournment. It was not disputed that there had been no payment since 2018 and these proceedings were issued in 2019. The defence was extremely short and relied on specific items of alleged mismanagement by the Applicant. The Respondents had failed to produce their case documents and evidence as required by the case management directions given in early November 2020. We heard no good reasons why Mrs Davern, Mr Davern's office manager or anyone else could not have helped Mr Davern with preparation or represented the Respondents at the hearing, and no proper medical evidence had been provided.

10. We offered to start the hearing by considering the issues in the Respondents' defence and anything else Mr Davern wanted us to consider, in case he became too tired later, but he said he would not be able to add anything to the hearing. We said he could listen to the hearing and we could ask him any relevant factual questions or give him an opportunity to ask questions or make any points he would like to make, but he declined and left the hearing.

The property/lease

11. Mayfield Court is described as a gated estate with underground parking and two four-storey blocks of flats: a larger block (Nos. 1-38) with a lift, and a smaller block (Nos. 39-50) with no lift. Mrs Fenn told us that the estate was built in about 2007, the date the lease was granted. She said that most of the flats (about 41) were leasehold, with some rented units.

12. Flat 1 is a ground floor flat held by the Respondents under a long lease. The Demised Premises are defined in Schedule 3 to the lease. In the usual way, they include "*…all Service Installations utilised exclusively by the Demised Premises*". The lease requires provision by the landlord/manager of repairing and other services and contribution by the lessees towards the relevant costs (defined as Maintenance Expenses) by way of a variable service charge. As matters stand, the manager under the lease is the Applicant landlord. By clause 6, subject to specified exceptions, the manager covenants to provide the services referred to in Schedule 10 and set out in Schedule 6.

13. The leaseholder covenants in Schedule 7 to pay the specified proportions:

a. of the Maintenance Expenses in advance from 1 April in each year, based on the Manager's estimate of those expenses for the forthcoming year; and

b. of any shortfall, within 14 days of service of accounts of Maintenance Expenses for the period ending 31 March.

14. The service charge proportions specified in the lease are:

a. 2.2% of the costs in Part A of Schedule 6, which are essentially repair and maintenance of the communal parts of the Estate, buildings insurance and supply of cold water; and

b. 2.7% of the costs in Parts B and C of Schedule 6, which are essentially: (B) inspecting and maintaining the surface and underground car parks; and (C) all other costs, such as third-party liability insurance, staff, accountancy, the "*reasonable and proper fees of the Manager from time to time as to its general management of the Estate*", lighting, specified reasonable and proper expenses, and such sums as are reasonably necessary to provide a reserve fund or funds for items of expenditure expected to be incurred at any time in connection with the communal parts.

The pleadings

15. Despite the directions requiring the Applicant to produce particulars including a breakdown of the £3,494.23 claimed in the county court proceedings, the Applicant said in its statement of case that it was seeking:

a. for 2018/19, ground rent of £230 and service charges of £1,922.33; and

b. for 2019/20, ground rent of £230 and service charges of £1,953.12.

16. At the hearing, Mrs Fenn confirmed the Applicant wanted us to decide for ourselves which of the service charge items for 2019/20 to determine, since only some of those fell within the sum claimed in the county court proceedings. The Applicant said the Respondents had made no payment in respect of Flat 1 since 20 March 2018. That payment would have related to the previous service charge year.

17. By section 19 of the 1985 Act, relevant costs are to be taken into account in determining the amount of a service charge payable: (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 those services or works are of a reasonable standard. Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.

18. In their defence, the Respondents said they let the Property to tenants. They contended that the standard of management was unacceptable for the following reasons. We assess these below, solely for the purpose of determining whether the relevant service charges are payable.

Flue hatch

19. The Respondents said a flue hatch in the flat needed to be replaced to comply with gas safety regulations. In their answer, the Applicant said they were not responsible for services in the flat or which exclusively serve the flat.

20. We are not satisfied that the Applicant was managing inadequately in the relevant years or in breach of any obligation in relation to the flue hatch referred to. It appears from the Respondents' description that this is part of the Demised Premises which they, not the Applicant, are obliged by the lease to maintain. We could only speculate about whether the Respondents might (some 12 years after the building was constructed) have had any grounds for complaint against the builder or anyone else about the flue hatch. They gave inadequate particulars and produced no evidence apart from the very brief and unspecific assertion in their defence.

Car park

21. The Respondents said there was a "*continual leak*" in the car park which dripped onto a tenant's vehicle and caused damage, but no "*meaningful*" response from the Applicant. In their answer, the Applicant said there was a leak in 2014, several years before the service charge periods in question. At the hearing, Mrs Fenn explained that it had taken a long time to resolve this leak in 2014 because the leaking pipe was under screed in one of the ground floor flats. The Applicant had problems getting access to these flats (including Flat 1) to search for the source of the leak. Once the source had been located, they could then require the relevant leaseholder to repair their internal piping to stop the leak. Mrs Fenn said there had been no correspondence from the Respondents about their tenant's concerns. She said that if they had contacted the Applicant, the alleged problem could have been avoided by arranging for the tenant to use one of the other spaces on the site while the leak was being investigated and resolved.

22. We are not satisfied that the Applicant was managing inadequately or in breach of any obligation in relation to this leak. We accept the

evidence of Mrs Fenn. The Respondents did not produce any details of the timing of the leak, or any evidence of any loss or whether/when the leak and the problem with the tenant's vehicle were reported to the Applicant.

Entrance gates

23. The Respondents said there were "*constant problems*" with the automated entrance gates at the development, with the gates often stuck or left wide open, which was a "*significant security issue*". In their answer, the Applicant said that the electronic gate was serviced every six months. They agreed it did from time to time malfunction when parts needed to be replaced or it was vandalised. At the hearing, Mrs Fenn explained that the gates had worked reasonably well in the last 18 months but there had been a spate of issues before that. Some of the problems were caused by delivery drivers hitting the gates, but on several occasions a problem was resolved by replacing a part only for a different part to fail soon afterwards. After several such parts had been replaced, the gates had worked well. When the gates malfunctioned, they were kept open to ensure that people had vehicular access.

24. Again, we are not satisfied that the Applicant was managing inadequately or in breach of any obligation in respect of the entrance gates. We accept the evidence of Mrs Fenn.

CCTV

25. The Respondents said the CCTV is "*never available for examination as it always appears to be not working*". In their answer, the Applicant said that the CCTV had been decommissioned because it was not working, and there were no costs associated with the CCTV system during the period it has not been working. They said it had only been set up to cover the vicinity of the gate, not the wider estate or car parks. They said there had been "*no desire from residents*" to install a new system. Mrs Fenn said that, at the time, there had been an active residents' association, but they had not asked the Applicant to investigate replacement. The CCTV system had been limited and the feedback from the association was that if the Applicant did look at replacement a system with wider coverage would be better.

26. We are not satisfied that the Applicant was managing inadequately or that the Respondents suffered any loss in relation to the CCTV system. As we said to Mrs Fenn, the lease does seem to expect CCTV to be provided, although there is provision for the landlord to discontinue services in consultation with leaseholders. In any event, the Respondents produced no evidence of any actual problems they had experienced because of the inoperative CCTV, let alone evidence of any loss which might be set off against the service charges claimed.

Information/communications

27. The Respondents said they had never been sent a detailed breakdown of the management charges being claimed. They also said that communication was unacceptable, with no-one appearing to take responsibility for dealing with problems on site, telephone calls rarely returned and failure to appreciate the "*strain that their inadequate services place on the relationship between landlord and tenant*".

28. In their answer, the Applicant pointed to the budgets, demands and accounts sent to all leaseholders. Mrs Fenn told us that the Applicant is working on producing clearer information for leaseholders in future.

29. The Applicant relied on witness statements from Mrs Fenn and Mr Karim which said, in identical terms, that the correspondence with the Respondents relating to the current period of non-payment did not include any comments or complaints about the services provided. They said that, when the Respondents had called them, it had been about issues such as a water leak from or into one of their properties. We asked about this. Mrs Fenn told us that she had been dealing with the estate since 2014 and Mr Karim had been dealing with it for the last two years. She told us the Respondents had not made any relevant complaints and conversations had been about leaks either from their flat or from other flats, not communal parts of the estate. The Respondents had two flats on the estate and both were rented out. In both cases, there had been very little correspondence. Residents could contact the Applicant through their website, by e-mail or by telephone and there is a home ownership team.

30. In our assessment, the quality of information provided to leaseholders was not good. It seeks to cover the basics, but is very difficult to follow and does not give enough information to enable calculation of the service charges being demanded, or not in a way that corresponds with those service charges, as explained below. However, the Respondents have again failed to provide adequate details or any real evidence for their other general allegations in relation to communication or failures to respond. We accept the evidence of Mrs Fenn about those matters. The standard of the information provided to leaseholders is taken into account in our assessment below of the management fee payable for the relevant years.

Claimed service charges of £1,922.33 for 2018/19

31. The Applicant said in their statement of case that their figure of £1,922.33 was comprised of £165.72 for buildings insurance, £279.96 for management fees, £821.52 for "services", £424.32 for planned maintenance, £205.08 for water and a deficit of £25.73.

32. The main demand on 8 February 2018 was for an estimated service charge (paid monthly) of £1,896.65 for the year from 1 April 2018. On 23 September 2019, the Applicant provided the service charge accounts for this year and demanded the deficit of £25.73, the total sum of £1,922.38.

33. These accounts state the following actual costs, which would equate to the following sums.

Item	**Actual cost (£)**	**Proportion (%)**	**Amount (£)**
Buildings insurance	7,039.30	2.2	154.86
Communal repairs	14,906.81	2.2	327.95
Communal services	10,037.01	2.2	220.81
Caretaking	483.30	2.2	10.63
Water	11,179.77	2.2	245.95
Management fees	18,749.46	2.7	506.24
Major works fund	16,728.84	2.7	451.68
Electricity	11,637.84	2.7	314.22

34. We noted that the buildings insurance cost was less than the sum claimed. Mrs Fenn explained that the difference related to the different policies for the leasehold and rented flats, which had different premiums because the latter had a higher excess. She accepted that no details or evidence of this had been provided to us and that we would determine the figure of £154.86 based on the documents provided.

35. We asked about the claimed management fee of £279.96. Mrs Fenn told us this was a comprehensive fee, including staffing costs, accountancy/audit work and public liability insurance. She said this was at the upper range of a sliding scale of fixed charges per flat (which were less than the actual costs in the accounts) because this estate required more management work than average in view of the lift, a water/sewage pump and the entrance gates. In our assessment, taking into account these points and the less than helpful information provided to leaseholders, we consider that a management fee of £220, but no higher, was reasonably incurred.

36. The accounts indicate that the previous balance of the major works reserve fund was £44,298.28. The above contribution would (after deductions of £5,144.75 for roof, gate and other repairs) take this up to

£55,970.57 in addition to a separate £6,134.71 lift works reserve fund. Mrs Fenn told us that a life cycle costs assessment had been carried out, although a copy had not been produced in the bundle. She said that this was the assessment of the Applicant's asset management team of costs expected to be incurred in more than five years. She gave the examples of decoration, carpets, the lift, the roof, the door entry systems, the electronic entrance gates and the water/sewage pump. Since the reserve fund contribution had not been challenged by the Respondents in their defence, and based on the evidence provided, we consider that the claimed contribution of £424.32 is reasonable.

37. We treat the £821.52 estimated cost claim for "*services*" as including communal repairs, communal services, caretaking and electricity. This is less than the relevant proportions of the costs incurred, as set out above (totalling £873.61). Similarly, the estimated cost claim to £205.08 for water is less than the relevant proportion of the cost incurred (£245.95). The total shortfall between these figures (£92.96) is more than the actual cost deficit of £25.73 claimed in these proceedings. Again, since these claims are not challenged by the Respondents in their defence, and based on the evidence provided, we consider that these costs were reasonably incurred.

38. Accordingly, for this service charge year we allow buildings insurance of £154.86, management fees of £220, the reserve fund contribution of £424.32, the water costs of £205.08, the other services of £821.52 and the balancing payment of £25.73, the total sum of £1,851.51.

Service charges for 2019/20

39. The balance of the county court claim to £3,494.23, after deducting the £460 rent claim and the £1,851.51 service charges determined for 2018/19, is £1,182.72.

40. The Applicant said in their statement of case that they were claiming service charges for 2019/20 of insurance of £169.44, a management fee of £279.96, services of £845.16, planned maintenance of £426 and water costs of £232.56.

41. The relevant demand on 5 February 2019 was for an estimated charge (paid monthly) of £1,953.08. We summarise our examination of the accompanying budget as follows.

Item	**Estimate (£)**	**Proportion (%)**	**Amount (£)**	**Demanded (£)**
Buildings insurance	6,996.62	2.2	153.93	169.49

Communal repairs	17,789.87	2.2	391.38	390.09
Communal services	10,869.01	2.2	239.12	239.36
Caretaking	1,853.36	2.2	40.77	28.36
Water	10,557.96	2.2	232.28	232.51
Management fees	16,327.30	2.7	440.84	280
Major works fund	16,728.13	2.7	451.66	425.96
Electricity	8,505.66	2.7	229.65	187.31

42. For the same reasons as those given above, we determine that a buildings insurance cost of £153.93 and a management fee of £220 are reasonable. As we agreed with the Applicant, we use our calculation of the water cost of £232.28, which is slightly less than the sum claimed. Similarly, and for the same reasons as those given above, a reserve fund contribution of £425.96 (as demanded) is reasonable.

43. Again, we treat the £845.16 estimated costs claim for "services" as including all the other costs set out above. We note this is less than the apparent proportions of the estimated costs (£900.92). The sum claimed is not disputed by the Respondents and it appears to be reasonable. However, we can only make our determination in respect of £150.55 of this claim, because that will take us up to the balance of £1,182.72 for which we have jurisdiction in these proceedings.

44. Accordingly, for this service charge year we allow buildings insurance of £153.93, management fees of £220, water costs of £232.28, a reserve fund contribution of £425.96 and £150.55 towards the other services, the total sum of £1,182.72. This leaves outstanding the balance of £694.61 from the claim to £845.16 for the other services (communal repairs, communal services, caretaking and electricity). Again, it seems to us that this balance of £694.61 is reasonable and payable, but we do not have jurisdiction to decide that in these proceedings.

Other claims in the county court proceedings

45. These aspects were considered by Judge David Wyatt sitting alone as a judge of the county court.

Ground rent

46. I am satisfied that £460 is payable by the Respondents for ground rent for the relevant periods. The lease requires payment of the current annual rent of £230. Rent of £230 was demanded on 8 February 2018, requiring payment on 1 April 2018 for the year to 31 March 2019. Rent of £230 was demanded on 5 February 2019, requiring payment on 1 April 2019 for the year to 31 March 2020.

Legal costs

47. I allocated this case to the small claims track. Mrs Fenn confirmed that the Applicant sought only the court issue fee of £185, not any other costs of the proceedings, and would not seek to recover such costs through the service charge.

48. The correspondence indicates that, from 14 February 2019 until they issued proceedings in October 2019, the Applicant had been writing to the Respondents to seek to recover arrears of more than £2,000 in respect of Flat 1 at least every month and without any response.

49. Accordingly, my decision is that pursuant to CPR 27.14(2) the costs payable by the Respondents in these proceedings are the court issue fee of £185.

Interest

50. There was no claim to interest or any other sums.

Conclusion

51. In summary, the following awards are made in favour of the landlord:

    (i) in the tribunal, service charges of £3,034.23; and

    (ii) in the county court, ground rent of £460 and the issue fee of £185.

52. In order to bring the matter to a conclusion I have drawn a form of judgment that will be submitted with these reasons to the County Court sitting at Watford, to be entered in the court's records.

53. All payments are to be made by a date to be confirmed following hand down.

Name: Judge David Wyatt **Date:** 2 March 2021

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.

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

5. Any application for permission to appeal must arrive at the tribunal offices in writing within 28 days after the date this decision is sent to the parties.

6. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

7. If an application is made for permission to appeal and that application is refused, or if no application for permission to appeal is made but, in either case, a party wants to pursue an appeal, that party must file an Appellant's Notice at the County Court office (not the tribunal office) within 28 days of the Hand Down Date.

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.