



**FIRST-TIER TRIBUNAL PROPERTY  
CHAMBER (RESIDENTIAL PROPERTY) &  
IN THE COUNTY COURT at BIRMINGHAM  
sitting at Centre City Tower,  
5 – 7 Hill Street, Birmingham B5 4UU**

**Tribunal Reference** : **BIR/00CT/LIS/2022/0001**

**Court claim number** : **Go0BM584**

**Property** : **Flat 1, Hatchford Court, Old Lode Lane,  
Solihull, B92 8NG**

**Applicant/Claimant** : **Brickfield Properties Limited**

**Representative** : **Counsel – Miss A Kaur (from St Philips  
Chambers), instructed by Shakespeare  
Martineau LLP**

**Respondent/Defendant** : **Ms S Cookson**

**Tribunal Members** : **Judge Gandham  
Mr D Satchwell FRICS**

**In the County Court** : **Judge Gandham (sitting as a Judge of the  
County Court [District Judge])**

**Date of Hearing** : **21 April 2022**

**Date of Decision** : **25 May 2022**

---

**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 Tribunal finds that, as during the course of the hearing Ms Stephanie Cookson admitted that service charges of £1,141.19 were reasonable and payable by her to Brickfield Properties Limited, the issue did not fall within the Tribunal's jurisdiction (pursuant to section 27A(4)(a) of the Landlord and Tenant Act 1985).
2. The Tribunal determines that:
  - (i) under section 168(4) of the Commonhold & Leasehold Reform Act 2002, Ms Cookson has breached a covenant in her lease for failing to pay the said service charges of £1,141.19; and
  - (ii) additional service charges of £6,682.56 are not currently payable by Ms Cookson to Brickfield Properties Limited, as such sums have not been properly demanded of her.

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

3. The following sums are payable by Ms Cookson to Brickfield Properties Limited by 7 June 2022:
  - (i) Interest at 3.75% calculated on the service charges to the date of judgment: £133.55; and
  - (ii) Costs of £6,605.00 inclusive of VAT and court fees.

## **Introduction**

4. Brickfield Properties Limited ('the Applicant') is the freehold owner of the development known as Hatchford Court, Old Lode Lane, Solihull, B92 8NG ('the Development'). Ms Stephanie Cookson ('the Respondent') is the lessee of Flat 1, Hatchford Court ('the Property'), under a lease dated 17 July 2012 made between the Applicant and Daniel James Bird ('the Lease').
5. The Applicant issued proceedings in the County Court against the Respondent under claim number GO0BM584. The claim in the County Court comprised of the following:
  - (i) A declaration that the Respondent was in breach of her covenants under the Lease;
  - (ii) interest on arrears of service charges; and
  - (iii) the costs of the action.
6. By an order of Deputy District Judge Jones dated 6 January 2022, the proceedings were transferred to the First-tier Tribunal. The Tribunal issued a Directions Order on 26 January 2022 and a remote hearing, via the Video Hearing Service (VHS), was scheduled for 21 April 2022.

7. All First-tier Tribunal judges are now judges of the County Court. Accordingly, where First-tier Tribunal judges sit in the capacity as judges of the County Court, they have jurisdiction to determine issues relating to ground rent, interest or costs that would normally not be dealt with by the tribunal.
8. The Tribunal confirmed to the parties, in the Directions Order, that all the issues in the proceedings would be decided by a combination of the First-tier Tribunal and the Tribunal Judge sitting alone as a Judge of the County Court. Accordingly, Judge Gandham presided over both parts of the hearing, which has resolved all matters before both the tribunal and the court.
9. This decision will act as both the reasons for the tribunal decision and the reasoned judgment of the County Court.

### **The Lease**

10. The Lease of the Property in 2016 was a new lease granted in substitution of a previous lease of the Property dated 23 April 1993 made between City and Country Properties (Midlands) Limited and Paul Edwin Sheldon ('the Previous Lease').
11. The Lease confirmed that the flat was demised upon "*the same terms and subject to the same covenants provisos and conditions*" as were contained within the Previous Lease "*except as to the rent and term of years granted and except as modified in the Schedule...*".
12. The Lease was granted for a term of 189 years from and including 25 March 1974, an increase of 90 years from the term detailed in the Previous Lease. Clause 1 of the Lease confirmed that the new rent was "*one peppercorn per annum (if demanded)*" and the Schedule (in addition to other provisions not applicable to this application) confirmed that the dates upon which the interim service charges were payable were "*25<sup>th</sup> March and 29<sup>th</sup> September in each year*", as opposed to with the half-yearly payment of rent as stated in the Previous Lease (presumably, as the demanding of rent had, effectively, been made obsolete).
13. In relation to prevailing terms in the Previous Lease, under clause 2 of the Previous Lease, the lessee covenanted to pay and contribute a proportionate part towards the cost of the service charge for the services detailed in clause 2(2)(A). This, under the provisions in clause 2(2)(B)(vi), was by way of payment of an "*Interim Service Charge*" determined by the lessor "*in advance and on account*" and a statement detailing the amount of the Interim Service Charge that was payable on the payment date was to be delivered to the lessee "*prior to each of the said half yearly dates on which the Interim Service Charge*" became due.
14. Under clause 2(3) of the Previous Lease, if the Interim Service Charge remained unpaid for 28 days, the lessee also covenanted to pay:

*“a sum equal to interest at the rate of three percent above the then base rate of Lloyds Bank Plc...on the amount of the said rent Interim Service Charge or balance of service charge (as the case may be) outstanding from the date or dates upon which the same became payable until the date of payment”.*

15. In clause 2(7) of the Previous Lease, the lessee also covenanted:

*“To pay to the Lessor on an indemnity basis all costs, fees, charges, disbursements and expenses (including without prejudice to the generality of the above those payable to counsel, solicitors, surveyors and bailiffs) properly and reasonably incurred by the Lessor in relation to or incidental to:-*

*...*

*(d) The preparation and service of a notice under the Law of Property Act 1925 Section 146 or incurred by or in contemplation of proceedings under Sections 146 or 147 of that Act notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court.”*

### **The Hearing**

16. An oral hearing was held via VHS on 21 April 2022. Miss Michelle Samuels (an Area Manager) and Mrs Deborah Murphy (a Rent Administrator) attended on behalf of the Applicant and the Applicant was represented by Miss Kaur (Counsel from St Philips Chambers) and Mrs Pia Eames (an Associate at Shakespeare Martineau (the Applicant’s Representative)). The Respondent gave evidence on her own behalf.

### **The Issues & Decisions (Tribunal proceedings)**

#### ***Service Charge and Breach of Covenant***

17. The Applicant provided (within the hearing bundle) a written statement of case, a copy of the Respondent’s title, copy correspondence with the Respondent, copies of service charge demands sent to the Respondent, the Respondent’s statement of account and service charge accounts for the years 2017 to 2020. In addition, on the day prior to the hearing, Miss Kaur provided a skeleton argument on behalf of the Applicant.
18. The Applicant submitted that the Respondent was in breach of her covenants under the Lease as she had failed to pay rent and service charges. The Applicant stated that a Notice of Breach letter had been sent to the Respondent on 23 July 2019 (‘the Notice of Breach letter’) which, at that time, detailed a sum of £1,141.19 as payable and due.
19. The Applicant stated that a stop was placed on the Respondent’s account in July 2019 and that, subsequently, proceedings were issued at Birmingham County Court for a declaration that a breach of covenant had occurred, as required under section 81 of the Housing Act 1996 as a precursor to the Applicant being able to serve a notice pursuant to section 146 the Law of Property Act 1925 (‘the 1925 Act’) to forfeit the Lease.

20. The Applicant stated that further service charges had accrued since July 2019 and that the Respondent continued to reside at the Property, benefitting from the services provided without paying the contributions required under the Lease. The Applicant submitted that the arrears on the Respondent's account, as at 7 February 2022, amounted to £7,823.75 (including the sum of £1,141.19 demanded in the Notice of Breach letter, plus further arrears which had accrued of £6,682.56). In its written statement, the Applicant produced a table detailing the outstanding sums it stated were due.
21. In the written statement, the Applicant requested that the Tribunal make a declaration confirming the breach of the lease covenants of £7,813.75 [*presumably a typographical error as the statement and table referred to the sum of £7,823.75*] up to and including 7 February 2022, or, in the alternative, a declaration of breach of lease covenants of £1,141.19 up to and including July 2019, extending to further arrears arising to 7 February 2022.
22. In her skeleton argument, Miss Kaur submitted that there appeared to be no formal application or defence made by the Respondent challenging the reasonableness of service charges other than a table of comments, some photographs and a comparative service charge quote. Miss Kaur submitted that it was for the Respondent to establish a prima facie case where sums expended by the Applicant did not appear to be unreasonable. Miss Kaur stated that the Applicant had already responded to the Respondent's table of comments and that the comparative service charge quote provided insufficient information, so was not a fair comparison.
23. The Respondent had not provided a formal statement of case as requested in the Directions Order. Instead, she provided an email detailing her personal circumstances and a brief explanation as to why she had not resolved matters with the Applicant earlier. She also supplied documentation which she stated she had previously supplied to the court, including queries she had made regarding certain items of service charge, photographs relating to the maintenance of the development and an advert for a leasehold flat for sale on another estate.
24. At the hearing, Miss Kaur confirmed that there had been a rapid change of circumstances in the days prior to the hearing, as discussions had taken place between the parties. She stated that she understood that the Respondent no longer wished to pursue an argument that the outstanding service charges were either unreasonable or not payable by her, however, as the Applicant was yet to receive any payments from the Respondent, the Applicant wished the tribunal and court proceedings to continue.
25. Miss Kaur confirmed that only the sums of £932.81 and £208.38 had been formally demanded from the Respondent and that, following the rent stop having been placed on the account in July 2019, no further service charges demands had been issued to her.

### *The Tribunal's Deliberations and Determinations*

26. The Tribunal considered all the written and oral evidence submitted and briefly summarised above.
27. The Tribunal noted that the Respondent had admitted that service charge of £1,141.19, demanded from her in 2019, was reasonable and payable by her to the Applicant. As the Respondent had agreed that these charges were due and had admitted liability for payment of them, the Tribunal finds that any question regarding liability to pay the same no longer falls within the Tribunal's jurisdiction, pursuant to section 27A(4)(a) of the Landlord and Tenant Act 1985.
28. As the Respondent had admitted that she was liable to pay such sum and had failed to pay the same, the Tribunal finds that she is in breach of clause 2(2)(B)(vi) of the Lease. Accordingly, the Tribunal determines, under section 168(4) of the Commonhold & Leasehold Reform Act 2002, that a breach of a covenant in the Lease has occurred.
29. The Tribunal noted that the Applicant had put a stop on the Respondent's account in July 2019. Following that date, no further service charge demands had been issued to the Respondent as the Applicant had decided to pursue court proceedings against her for a declaration of breach of covenant as a precursor to forfeiture proceedings.
30. Although the Applicant submitted that service charge arrears amounting to a sum of £6,682.56 (up to 7 February 2022) were, additionally, due from the Applicant, the Tribunal determines that this figure is not payable as the service charges comprising the same have not been properly demanded from her.

### **The Issues & Decisions (Court proceedings)**

#### ***Ground rent***

31. Although the Applicant had referred to the Respondent's failure to pay ground rent in the written statement of case and in the skeleton argument, there was no evidence that any ground rent had been demanded and Judge Gandham noted that the Lease had substituted the ground rent detailed in the Previous Lease to a peppercorn rent. Accordingly, Judge Gandham determines that no ground rent is due.

#### ***Interest on Service Charges***

32. At the hearing, Miss Kaur referred to the provisions in clause 2(3) of the Lease, which stated that the lessee was liable to pay interest at the rate of 3% above the base rate of Lloyds Bank plc on any amount of service charge due from the lessee from the date upon which the same became payable until the date of payment. The Respondent accepted that she was liable to pay interest under the terms of the Lease.

33. Taking into account the fact that the Respondent knew and admitted that she had been liable to pay service charges in the sum of £1,141.19, and there appearing to be no good reason for the Respondent not to have paid the sums in question sooner, Judge Gandham determines that the Applicant is entitled to interest against these items of service charge at the rate of 3.75% from the dates such sums became due until the date of judgement.
34. The items of service charge found to be payable by the Tribunal arose from two demands issued in 2019. Although both demands referred to the amounts requested as relating to service charge for the period 1 October 2018 to 31 March 2019, the first demand (for an amount of £932.81) was dated 5 March 2019 and the second demand (for an amount of £208.38) was dated 13 May 2019.
35. As clause 2(2)(B)(vi) of the Previous Lease required a statement of account to be sent to the Respondent prior to the date of payment and the Lease amended the payment dates to 25 March and 29 September, Judge Gandham found that the first demand was payable from 25 March 2019 but that the second demand was only payable from 29 September 2019.
36. As such, the interest awarded against and payable by the Respondent in relation to the service charge due is as follows:

£112.80 for the service charge demand dated 5 March 2019 (1,177 days); and  
£20.75 for the service charge demand dated 13 May 2019 (969 days);

### **Costs**

37. The Applicant had submitted a Statement of Costs which amounted to a sum of £11,768.60 (inclusive of VAT and court fees).
38. Miss Kaur submitted that the costs had been incurred by the Applicant in contemplation of forfeiture proceedings against the Respondent, which had clearly been set out in the Notice of Breach letter. Miss Kaur stated that clause 2(7)(d) of the Previous Lease provided for the recoverability from the Respondent of costs incurred in, or contemplation of, any proceedings under sections 146 and 147 of the 1925 Act. Miss Kaur also referred to section 146(4) of the 1925 Act, which she stated also provided recoverability of costs from a lessee in cases relating to any breach giving rise to a right of re-entry due to forfeiture. Miss Kaur noted that the Respondent had not made a section 20C application in respect of costs.
39. Mrs Eames confirmed that any of the Applicant's costs relating to the application for reinstatement of the court proceedings, referred to in the Order made by Deputy District Judge Jones on 6 January 2022, had been excluded from the Statement of Costs submitted by the Applicant. She confirmed that the two entries referred to as "*Agents fee*" detailed in the "*Other expenses*" box related to agency fees for LPC Law, who were instructed by the Applicant's Representative to attend the County Court hearings. Mrs Eames was not able to confirm as to why preparing the final statement of costs (item 45) took 5 hours

to complete, when the time taken to prepare the previous statements (items 15 and 27) each took 36 minutes.

40. The Respondent stated that she had been looking after her elderly mother and, due to mental health issues and a seeming lack of understanding by the management company, she had let matters “*get out of hand*”. Although she had no specific questions regarding any particular items on the Statement of Costs, she queried the overall level of costs.

#### *Decision and Reasons*

41. The first issue for the County Court is whether to award some or all of the costs. The second issue is then the qualification of such costs as are awarded.

42. In terms of the award of the costs, Judge Gandham made an order under section 51 of the Senior Courts Act 1981. She applied the presumption found in CPR 44.2 of the Civil Procedure Rules, namely that the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, in line with the test found in *Barnes v Time Talk (UK) Ltd* [2003] EWCA Civ 402:

*“In deciding who is the successful party the most important thing is to identify the party who is to pay money to the other. That is the surest indication of success and failure.”* [Para 28]

43. Judge Gandham recognised that this was a rebuttable presumption and that in cases which have a contractual right to costs an important factor is also the contractual provision. She took into account the decisions in *Forcelux v Martyn Ewan Binnie* [2009] EWCA Civ 1077, *Church Commissioners v Ibrahim* [1997] EGLR 13 and *Chaplair Limited v Kumari* [2015] EWCA Civ 798 and recognised that an order to pay costs is discretionary, however, where there is a contractual right to costs that discretion should ordinarily be exercised so as to reflect that contractual right. Judge Gandham concluded that the provision for contractual costs carries considerable weight but does not displace the Court’s overall discretion.
44. In addition, she noted that in *Chaplair* it was stated by the Court of Appeal that contractual costs were recoverable by a lessor for both tribunal proceedings and for small claims proceedings in the County Court.
45. Judge Gandham considered the wording of clause 2(7) of the Previous Lease and noted that it referred to costs (including costs payable to counsel and solicitors) incurred by, or in contemplation of, proceedings under section 146 of the Act. Judge Gandham noted that the Notice of Breach letter clearly referenced that the Applicant was considering forfeiture proceedings. She also noted that the Applicant had placed a stop on the Respondent’s account in 2019 pending the outcome of the dispute, in order to protect its position should the Respondent have failed to clear her debt, and that the amount owing at that time exceeded the sum of £350.00. Accordingly, Judge Gandham found that the costs incurred in both the court and tribunal proceedings were incurred in contemplation of proceedings under section 146 of the Act.



46. Judge Gandham found that it was reasonable for the Applicant to have pursued the proceedings and noted that the Respondent appeared not to have fully engaged with the court proceedings.
47. Having weighed all the circumstances in the matter, Judge Gandham decided that the Applicant was a successful party and that the appropriate order was that the Respondent should pay the Applicant's costs, as assessed.
48. The costs are assessed in accordance with CPR 44.3, 44.4 and 44.5. Judge Gandham noted that, where there are contractual costs, the proportionality test does not apply and CPR 44.5 sets out how the court should decide the amount payable. Under CPR 44.5, there is a presumption that costs have been reasonably incurred and are reasonable in amount, however, Judge Gandham noted that those presumptions are rebuttable and, in assessing the costs, all the circumstances of the case have to be taken into account, particularly those set out in CPR 44.4(3). In addition, Judge Gandham noted that, under the lease provisions, only those costs which were "*properly and reasonably incurred*" were payable.
49. Judge Gandham noted that this had been a relatively straight forward matter relating to the failure of the Respondent to pay two items of service charge in 2019. Having placed a rent stop on the account, and not having demanded any further sums from the Respondent, the value of the claim was relatively small. Judge Gandham also noted that Respondent had provided little in the way of a defence in the court proceedings nor had she provided much in the way of evidence to establish a case against the reasonableness of the service charges. As such, Judge Gandham considered that there were no particular areas of complexity or novelty in the questions raised by the case.
50. In relation to the Statement of Costs, Judge Gandham noted that, other than a single telephone call, "*Attendances*" had all been carried out by either a Grade A solicitor (at £270.00 per hour), a Grade C fee earner (at £150.00 per hour) or a Grade D fee earner (at £135.00 an hour). Having regard to the circumstances of the case and noting the updated Solicitors' Guideline Hourly Rates, Judge Gandham was satisfied that the fee earners used and hourly charges utilised were not unreasonable for the work identified.
51. In respect of the items detailed in the "*Schedule of work done on documents*" ("the Schedule"), Judge Gandham noted that all of the work for the initial court proceedings, other than item 26 (the preparation of the second statement of costs, which had been carried out by a Grade D fee earner), had been carried out by a Grade C fee earner. Again, Judge Gandham considered that this was not unreasonable and, noting the work identified and the time spent on the same, she considered the costs for items 1 to 29 (an amount of £2,166.00) to have been reasonably incurred and reasonable in amount.
52. Items 30 to 45 in the Schedule appeared to relate to matters following the transfer of the case to the First-tier Tribunal. Judge Gandham noted that, although the majority of the work appeared to have been carried out by a Grade

A solicitor, some work had also been carried out by a Partner and a Grade D fee earner.

53. Judge Gandham considered that it was not unreasonable for a Grade A solicitor to have spent an hour to review the Tribunal's directions and to consider the scope of the service charge queries (items 30 and 32); however, noted that 7 hours appeared to have been spent in working on the statement of case and the hearing bundle (items 31 and 33 to 37).
54. Judge Gandham considered that the preparation of the statement of case should have been relatively straightforward, the Applicant's representative having already prepared the witness statement for the court proceedings. Although the statement of case consisted of eight pages, the first page was primarily comprised of the heading and over three pages of the statement comprised a table detailing the service charge arrears, two pages of which related to charges that had not even been demanded of the Respondent. The remaining four pages of the statement merely recorded the history of the case and the declarations that the Applicant wished the Tribunal to make. In addition, the remainder of the bundle simply comprised the title, copy correspondence, statements, demands and accounts.
55. Judge Gandham did not consider that the statement required any input from a partner and also considered that, based on the content of the statement, it was unreasonable for a Grade A solicitor to have spent any more than 2 hours in drafting and reviewing the same, with 42 minutes spent by a Grade D fee earner to collate the documents to accompany it and prepare the bundle. Accordingly, she determined that only a sum of £634.50 (exclusive of VAT) was reasonably incurred for items 31 and 33 to 37.
56. Judge Gandham considered the time taken to review the information from the Tribunal and the Respondent (item 38) to be reasonable but, noting that there had been no further directions issued by the Tribunal, other than considering matters in advance of the hearing (item 43), she considered items 39 to 44 were unnecessary and, therefore, not properly incurred.
57. In addition, Judge Gandham considered that spending 5 hours to prepare the final statement of costs (which only related to work carried out after 12 March 2021) was unreasonable and only allowed 36 minutes (as per the time taken for item 27).
58. Accordingly, Judge Gandham considered that a proper and reasonable amount to have been incurred for carrying out the work detailed in the Schedule was £3,475.50 (exclusive of VAT).
59. Finally, Judge Gandham, having considered that the matter was straightforward with no areas of complexity and that it related to a relatively low value dispute (£1,141.19), determined that the instruction of counsel to represent the Applicant at the hearing, at a cost of £2,000 plus VAT, to be wholly unreasonable. The hearing lasted half an hour and Judge Gandham

considered that a Grade A solicitor was capable of representing the Applicant at the hearing (amounting to a cost of £135.00 (exclusive of VAT)).

60. Having recalculated the costs in accordance with the above, they amounted to a sum of £4,959.50 plus £991.90 for VAT.
61. Judge Gandham considered the “*Other expenses*” detailed on the Statement of Costs, amounting to £596.00 plus VAT of 57.60, to be reasonable. As such, the total legal costs payable by the Respondent amounted to £6,605.00.
62. Accordingly, the Court finds that the costs payable by the Respondent (inclusive of VAT and court fees) is £6,605.00.

**Name:** Judge Gandham

**Date:** 25 May 2022

## **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 Walsall 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***

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