

## Making a date with service charges?

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JW Dirge, bachelor and property litigator is waiting expectantly in his office at Nice and Nice Solicitors of London W1 for his encounter with a legal journalist, Felicity Longhand Shaw. He has googled Felicity and has noted that she is interested in art, plays bridge and likes the opera. JW's pulse is racing. Unsure of what prompted her to request the meeting he assumes it must be down to the efforts of the Nice and Nice Marketing Department. The interview gets underway with JW Dirge eager to make a good impression.

FLS So Mr Dirge, I understand you specialise in residential service charge litigation. How did you get into that?

JWD Oh please call me JW and yes it was when I was a young solicitor with a provincial practice – Small Print and Sleep Solicitors in Axmouth. I was what was known as an articulated clerk in those days – some would say the lowest form of legal life. I was paid a pittance but had, through family, been able to buy a flat in a small block. The owner of the building billed me for decorating the exterior and I thought I would check to see if he had complied with the legal requirements. He had not and I got out of paying the costs - quite a tidy sum. My boss at Small Print and Sleep, Mr Oid, (initials AV) learned of this and thereafter every time a residential service charge dispute came in he would say 'Give it to Dirge' and before I knew it I became an expert.

FLS Looking back now at your own experience do you think you used the law to achieve an unjust result?

JWD I must confess to some feelings of guilt. The building looked a lot better after the landlord decorated it and it helped me to achieve a good price when I later sold the flat. After that experience the landlord passed the management of the building to a professional firm of managing agents and the service charges increased significantly. I suppose I was being pedantic and possibly opportunistic, but it was my right. It is a lesson I pass on to my landlord clients.

FLS So do residential service charge disputes differ from commercial service charge ones?

JWD Oh yes. By and large the body of statute law relating to flats and service charges does not apply to commercial property. My old boss A V Oid would not hesitate to do a wide swerve when he saw a residential service charge case come in. He quite liked commercial service charge disputes because they largely turned on the wording in the leases (and they paid better).

He could not bear the detailed regulation of residential service charges. He used to say "it had Dirge written all over it". I used to remonstrate with him about not being competent to advise landlords who had multi let mixed residential and commercial buildings but old AV Oid remained true to his name.

FLS Would you say we have a skewed set of laws for regulating service charges?

JWD Possibly – our laws are a reaction to wicked landlords who in the past took advantage of vulnerable flat owners. We have created a detailed body of rules and regulations which must be observed by landlords of flats. The red tape threshold is high. Below it sits a complex labyrinth that is daunting even for some lawyers. Certainly, I think it is beyond most lay people to engage with it.

In my view, the appointment of a managing agent is a must for all residential landlords. Managing agents make it their business to be familiar with the rules and they have systems and software programmes to guide them through the complexity to ensure compliance.

FLS Is it true that the most important protection for flat owners is that a landlord cannot recover building expenses exceeding £250 if he has not complied with the consultation requirement?

JWD Possibly the most well-known, but I think the consultation requirements can distract one from the basic standalone rules in Sections 18 and 19 of the [Landlord & Tenant Act 1985](#). Namely, that the sums payable are limited to costs which are “reasonably incurred” and the relevant services or works must be done to “a reasonable standard”. These are highly interpretable expressions which provide panoramic scope for disputes. An interesting spin on the consultation requirements is the thought that if they did not exist and there was little consultation, the First Tier Tribunal would be choc-a-bloc with tenants litigating over what are “reasonably incurred” works and services and whether they were done to a “reasonable standard”.

FLS Really JW? Oh do explain.

JWD Paradoxically, observance of the consultation requirements by the landlord may assist him by clothing the recoverability of the service charges with an extra layer of protection. If the rules required no consultation, the reasonableness tests may act like stark lightning rods for disputes, and one can argue about reasonableness until the cows come home. In our world, compliance with the consultation procedure is by itself a mark of reasonableness and may blunt any attack by a tenant who ignored the various consulting letters from the managing agents.

JWD [Pausing slightly] I must say it is very kind of you, Felicity, to show such an interest in my subject. Usually people start to glaze over when I start talking in detail about service charges.

FLS Actually JW, it is very interesting - entrancing even. Ahem, it just so happens that I have some service charge issues myself. In fact, I am heavily involved in a dispute over the sums that have been demanded of me for my flat. I have some papers with me. Would you have time for a brief look over them - possibly over a glass of wine...

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Note: an imaginary dialogue - all characters are fictional and any resemblance to a living person is unintentional

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