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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/11UF/LSC/2013/0090**
Property	:	**16 St Bernards Court, Harlow Road, High Wycombe HP11 1BL**
Applicant	:	**Mr C A J Brierley**
Representative	:	**Mr C A J Brierley In Person**
Respondent	:	**St Bernards Court (High Wycombe) Limited**
Representatives	:	**Mr D K Ray, Mr A D Ross, Mr G Tucker and Mrs J Smith (06.11.13 only) Directors**
Type of Applications	:	**Section 27A Landlord and Tenant Act 1985 – determination of service charges payable** **Section 24 Landlord and Tenant Act 1987 – appointment of a manager**
Tribunal Members	:	**Judge John Hewitt** **Ms Marina Krisko BSc (EstMan) BA FRICS** **Mr Derek Barnden MRICS**
Date and venue of Hearing	:	**5 and 6 November 2013** **De Vere Upland House** **High Wycombe**
Date of Decision	:	**22 November 2013**

DECISION

Decisions of the Tribunal

1. The Tribunal determines that:

1.1 In respect of the service charge year 2012 the Respondent shall repay to the Applicant the sum of £192.43;

1.2 An order shall be made and is hereby made pursuant to section 20C Landlord and Tenant Act 1985 (the 1985 Act) to the effect that none of the costs incurred or to be incurred by the Respondent in connection with these proceedings are to be taken into account in determining the amount of any service charge payable by the Applicant;

1.3 An order shall be made and is hereby made pursuant to section 24(1) Landlord and Tenant Act 1987 (the 1987 Act) to the effect that:

1. Mr Neil Douglas Kurz (Mr Kurz) is appointed manager of the development known as St Bernards Court, Harlow Road, High Wycombe HP11 1BL (the development) with effect on and from 1 December 2013;

2. The order appointing Mr Kurz as manager shall last for a period of two years, and thus shall terminate on 30 November 2015 ;

3. Mr Kurz shall manage the development in accordance with:

3.1 The directions and schedule of functions and services set out in the Schedule to this Decision;

3.2 The obligations of the landlord set out in the leases by which the flats within the development are demised to the lessees and in particular with regard to repair, decoration, provision of services and the insurance of the development; and

3.3 The duties of a manager set out in the Service Charge Residential Management Code (2nd Edition) published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State for England pursuant to section 87 Leasehold Reform, Housing and Urban Development Act 1993;

4. Mr Kurz shall have the power to require the lessees to make quarterly payments on account of their anticipated service charge liability in such sums as he shall see fit, notwithstanding the express provisions in the leases;

5. Mr Kurz shall have the power to create and administer a reserve fund for future anticipated expenditure and shall have the power to require lessees to make contributions to such a fund.

1.4 In addition, in accordance with section 24(1)(b) of the 1987 Act, Mr Kurz is appointed to receive:

1. The ground rents payable by the lessees of the flats within the development; and

2. The balance of the funds held by the Respondent as a reserve fund which are held by the Respondent on trust together with the sum of £3,000 which was recently withdrawn from that fund to pay for legal advice in connection with these proceedings; and

1.5 There shall be no orders as to costs or as to reimbursement of fees, the parties having reached a compromise settlement on those matters; which is mentioned in paragraph 83 below.

2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the section number and page number of the hearing file provided to us for use at the hearing. It should be noted that that not all section of the hearing file were separately page numbered.

Procedural background

3. On 28 June 2013 the Leasehold Valuation Tribunal received the two applications made by the Applicant (Mr Brierley), one pursuant to section 27A of the 1985 Act in relation to service charges payable and one pursuant to section 24 of the 1987 Act in relation to the appointment of a manager.

4. By virtue of the Transfer of Tribunal Functions Order 2013 SI 2013 No.1036 (the Order) the functions of the Leasehold Valuation Tribunal for areas in England were transferred to the First-tier Tribunal (Property Chamber) with effect on 1 July 2013.

5. As from 1 July 2013 the proceedings have been subject to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules), save to the extent that the Tribunal may dis-apply all or any of these Rules in favour of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (the Previous Regulations).

6. We have not dis-applied any of the Previous Regulations. However, as regards costs, by virtue of paragraph 3(7) to the Transitional and saving provisions set out in the Third Schedule to the Order, an order for costs may only be made if, and to the extent that, an order could have been made before 1st July 2013. Thus, as regards the subject application, our jurisdiction as to costs is limited to that which pertained prior to 1 July 2013.

7. Directions were duly given and by and large the parties have complied with them.

8. Mr Brierley has represented himself and acted as a litigant in person throughout.

9. Initially the Respondent was represented by solicitors but they were dis-instructed. Thereafter several of the directors of the Respondent acted on its behalf, principally Mr Ray, Mr Ross, Mr Tucker and Mrs Smith. Correspondence was co-ordinated and submitted by Mr Ray.
All four of those directors were present on the first day of the hearing and all but Mrs Smith were present on the second day.

10. At the hearing oral evidence was given by Mr Brierley and he was cross-examined by representatives of the Respondent. He also answered question put to him by members of the Tribunal. Mr Kurz was also present throughout the two days. He was interviewed by members of the Tribunal as regards his experience and suitability to be manager if the Tribunal proposed to order the appointment of a manager. He also answered a number of questions put to him by Mr Brierley and representatives of the Respondent.

11. During the course of the hearing the representatives of the Respondent present made a number of submissions to the Tribunal but they did not wish to give evidence

Background matters not in dispute

12. The development comprises 21 self-contained flats set in grounds in which there are lock-up garages, parking spaces and amenity grounds. The development was procured in the early 1970s by Smith & Lacy (Developments) Limited. The leases were granted between October 1972 and March 1973. Each lease requires the lessee to pay a ground rent of £15 per year. The ground rent income thus totals £315 per year.

13. The Respondent company was incorporated in September 1972. Paragraph 3(a) of its Memorandum of Association [5/14] provides that its principal object was to:

> *"To enter into and carry into effect ... an agreement intended to be made between Smith & Lacy (Developments) Limited of the one part and the Company of the other part whereby the property known as St Bernard's Court ... is to be conveyed to the Company ... and to enter into and execute such leases and to provide certain services to and for the owners and occupiers from time to time of the Flats and Garages forming part of St Bernard's Court ... being such services as are mentioned in a draft of the proposed Lease ... signed for the purposes of identification by the subscribers hereto."*

Paragraph 4 provides that the liability of the members is limited.

Paragraph 5 provides that the share capital of the company is £210 divided into 21 shares of £10 each.

14. The Articles of Association of the Respondent Company are at [5/9]. Paragraph 7 provides that each of the shares of the company numbered 1-21 shall be allocated to one of the flats.

There are restrictions on transfer to ensure that the owner of a share is also the owner of a lease of a flat within the development.

Paragraph 11 provides:

> *"The members of the Company shall from time to time and whenever called upon to do so by the Directors of the Company contribute equally to all losses and expenses incurred by the Company under the said leases or under any document dealing with the ownership of a flat to which it is part[y] or (without prejudice to the generality of the foregoing) otherwise in relation to the said property."*

15. In the event the Respondent company was not a party to the leases which were subsequently granted; they were all granted by Smith & Lacy Developments Limited. However, the leases define 'the Management Company to mean St Bernards Court (High Wycombe) Limited and by paragraph 26(a) of the Sixth Schedule there is a covenant on the part of the tenant that:

> *"The Lessee shall upon any transaction or disposition to which the Lessee is a party or over which the Lessee has any control involving a change or a contract for a change in the ownership of the demised premises ensure that the person becoming or contracting to become ... the lessee of the demised premises becomes also the holder of the Lessee's share in the Management Company"*

16. By a conveyance dated 30 April 1974 [5/1] and made between Smith & Lacy (Developments) Limited as vendor and the Respondent company as purchaser the freehold interest in the development was transferred to the Respondent subject to and with the benefit of the 21 leases which were identified and set out in the Fourth Schedule. The consideration was stated to be £1 plus a perpetual yearly rentcharge of £315.

17. The freehold title remains unregistered land. The original title deeds appear to have been mislaid.

18. Each member of the Respondent is entitled to be a director of the company and it appears that all 21 tenants were directors for the most part.

19. From an early time the day to day affairs of the Respondent were managed by a small group of directors who attempted to keep tight control of service charge expenditure. For the most part professional advice was not sought. It appears that annual budgets were prepared and tenants invited to make payments on account. Any year end surpluses were retained in what might

be termed a reserve fund, although the leases do not give express authority to the landlord to maintain such a fund. It appears that for the most part the tenants who were also shareholders and directors were content that their development was run and managed in this way.

20. Despite the passing of the 1985 Act and subsequent relevant legislation few if any of the statutory provisions regarding residential service charges were complied with. It appears that bookkeeping was very informal, demands for sums due were hand written on small pieces of paper and for many years it seems that surplus funds were held in the private bank account of one of the directors and drawn down as and when required. It is not clear whether annual accounts were prepared. We have only seen unaudited and abbreviated accounts have been prepared for the years ending 31 December 2010, 2011 and 2012.

21. Over time those directors who had stewardship of the affairs of the Respondent aged and became unwell or unable to continue to do so and some have passed away.

22. In or about November 2010 the directors of the Respondent obtained services of a bookkeeper, a Mr T Jones of TAB Services. As from 1 January 2011 Mr Jones was appointed General Manager. Directors became more and more reliant upon Mr Jones and he assumed additional responsibilities. Mr Jones' services were invoiced through TAB Services. He was appointed company secretary and a director of the Respondent. Evidently he is now the sole signatory on the bank accounts maintained with Santander Plc.

23. Mr Jones provided a range of services to the Respondent and was in effect its managing agent, even though he has little or no experience of residential property management or the complex statutory regulation of residential service charges. Mr Jones also convened meetings of directors, set the agenda, controlled the meetings as chairman of them and issued the minutes which were not always regarded by all as an accurate record. His control of the affairs of the Respondent was significant.

24. In a recent communication Mr Jones styled himself *"General Manager (Caretaker Role from 1st August 2013)"*.

25. Mr Jones did not attend the hearing because he said he had made other arrangements. What these were was not explained to us. It seems that he may have had an issue about not being named as a Respondent in the proceedings.

26. Mr Brierley took an assignment of the lease of flat 16 on 29 August 2012. He was appointed a director of the Respondent for a while but subsequently resigned.

27. Against that general background we can now consider each of the applications. It is convenient to deal firstly with the section 27A

application concerning service charges and then the section 24 application concerning the appointment of a manager.

The sections 27A application

The service charge regime as set out in the lease

28. The lease can be found in [section 2 of the hearing file. It has not been page numbered].

29. The lease is dated 28 November 1972 and was made between Smith & Lacy (Developments) Limited and Dorothy Lavinia Marie John. The lease granted a term of 999 years at a ground rent of £15 per year and on other terms and conditions as therein set out.

30. So far as material to the issues before the Tribunal the service charge regime set out in the lease is as follows:

    30.1 By Recital 1(e) a definition of the 'Maintained Property' as meaning that part of the property more particularly described in the Second Schedule. The Second Schedule provides that it is firstly the gardens, pleasure grounds, paths access ways, and forecourt forming part of the property and secondly, the main structural parts of the building including the roofs, foundations walls floors (other than wooden floors), all walls bounding flats and garages and the external parts of the building, but not including glass in the windows and non-structural walls within the flats and garages.

    30.2 By Recital 1(i) a definition of the 'Management Company' as meaning St Bernards Court (High Wycombe) Limited.

    30.3 By Recital 5 a statement that the Lessee is the holder or will be allotted one share in the Management Company.

    30.4 By clause 2 a covenant on the part of the lessee to observe and perform the covenants and obligations set out in the Sixth Schedule.

    Paragraph 23 of the Sixth Schedule provides that the lessee will in equal share with the lessees of the other flats comprised in the development keep the lessor indemnified from and against all costs, charges and expenses incurred by the Lessor in carrying out its obligations under the Seventh Schedule;

    Paragraph 24 provides that the lessee shall on each quarter day pay to the lessor on account of the liability arising under paragraph 23 one 21st of the proportionate amount (as certified in accordance with clause 9 of the Seventh Schedule) due from or payable by the lessee for the accounting period to which the most recent notice under clause 10 of the Seventh Schedule relates;

    Paragraph 25 provides that the lessee is to pay within 21 days of demand any balancing debit that might arise when the final account

is taken or is entitled to receive any balancing credit that may be due;

Paragraph 26 provides for the transfer of the share in the Management Company upon any disposition of the lease – mentioned above in paragraph 15 of this Decision.

30.5 By clause 3 a covenant on the part of the lessor to observe and perform the covenants and obligations set out in the Seventh Schedule.

Paragraph 1 of the Seventh Schedule imposes an obligation on the lessor to pay or cause to be paid:

> *" ... all existing and future rates assessments and outgoings now or hereafter imposed on or payable in respect of the Maintained Property"*

Paragraph 2 imposes an obligation to insure the development against specified perils;

Paragraph 4 imposes an obligation to keep all parts of the Maintained Property in a good and tenantable state of repair, decoration and condition including the replacement of worn or damaged parts;

Paragraph 6 imposes an obligation to keep the halls, stairs and landings properly cleaned, in good order and lit;

Paragraph 7 imposes an obligation to keep the access roads, forecourts, pathways, boundary walls and gardens in a good state of repair condition and, as to the gardens, cultivated;

Paragraph 8 requires the lessor to keep proper books of account in respect of all costs and expenses incurred in compliance with the obligations imposed by the Seventh Schedule and to prepare an annual account as at 31 December in each year;

Paragraph 9 provides that the account to be taken pursuant to paragraph 8 shall be audited by a competent chartered accountant who shall certify the total amount of such costs and expenses, (including the audit fee) and the proportionate part due from the lessee pursuant to paragraph 23 of the Sixth Schedule; and

Paragraph 10 provides that within two months of the date to which the accounts are taken the lessor is to serve on the lessee a notice in writing stating the said total and proportionate amounts certified in accordance with the requirements paragraph 9.

Preliminary issue – jurisdiction

31. When the Respondent was represented by solicitors, Blackstones, a preliminary issue was raised as to jurisdiction. It is set out in the Respondent's statement of case dated 22 August 2013 which was settled by Mr Jonathan Upton of counsel.

32. The gist of the point is that the Tribunal does not have jurisdiction to determine service charges because the sums claimed by the Respondent in respect of the maintenance charge are not service charges within the meaning of section 18 of the 1985 Act. It was submitted that the Respondent can raise funds to maintain the development and provide other services either:

    (i) By demanding sums from shareholders of the company pursuant to paragraph 11 of the Articles of Association; or

    (ii) By demanding sums from lessees through the service charge.

In support of the submission written witness statements of Andrew David Ross and Edna Joan Smith were served with the statement of case. Mr Ross states that he has been a lessee of flat 5 since 1972 when the flats were first released. He could not recall how management was dealt in the early days but in 1985/6 one of the lessees, Mr Roy Smith of flat 11 managed the development effectively on an unpaid basis. Mr Smith passed away in 2005 and another lessee, Mr Geoff Bowley, took over. Mr Bowley carried on for a few years but towards the end of 2010 he had to step down (he was then in his 90s and in poor health). In the absence of any other lessee willing or able to undertake the role the directors took the decision to engage the services of Mr Jones who had been providing book keeping services for some time.

The witness statement of Mrs Smith is of similar general effect although Mrs Smith states in paragraph 5 that the costs of maintaining the gardens, cleaning the exterior windows and communal stairs; *"would be demanded from the shareholders of the Company pursuant to the Company's Articles of Association although I do not have any written evidence of this."*

Mrs Smith also states the sums claimed were always referred to as a *"maintenance charge and never as a service charge.'* Mrs Smith says that she has never received a service charge demand in the 30 years she has lived in flat 11.

Mrs Smith exhibited an extract from a cash book circa March 1984 in which she recorded her personal expenditure and she drew attention to an entry dated 13 March 1984 *"St B Maintenance £115"* which she explained was a maintenance charge.

33. The Respondent's statement of case cites the authority of *Morshead Mansions Limited v Di Marco* [2008] EWCA Civ 1371 in support of the application.

34. At the hearing Mr Ray, on behalf of the Respondent, said that they wished to pursue jurisdiction point taken in the Respondent's statement of case. Although Mrs Smith and Mr Ross were both present on the first day of the hearing he did not wish to call them to give evidence. He said he was content to rely upon the submissions made in the statement of case.

35. The application was opposed by Mr Brierley. He made a number of submissions. He drew attention to paragraph 4 of the Memorandum of Association to the effect that the liability of members was limited; and to paragraph 11 of the Articles which he submitted was limited to losses and expenses incurred. He said that a loss would not occur if the company exercised the right to demand and receive service charges in accordance with the scheme set out in the leases. Mr Brierley also sought to distinguish *Morshead Mansions* and submitted that that authority could not apply to enable a landlord to avoid the consequences of the 1985 Act in relation to development scheme set up in 1972 and long before the 1985 Act came in to effect.

36. Having adjourned to consider the application, we determined that the application should be rejected. We preferred the submissions made by Mr Brierley. There was no evidence presented to us on which we could rely with any confidence that the sums demanded of lessees were demanded pursuant to paragraph 11 of the Articles and not pursuant to the terms of the leases. The fact that in prior years the demands may have been termed as a 'maintenance charge' as opposed to a 'service charge' does not, in our judgment, assist the Respondent's case. The fact is that sums demanded by the Respondent of lessees were applied to the costs incurred in the maintenance and repair of the development and the provision of services clearly within the provisions of the Seventh Schedule of the leases. Those costs are classically service charges within the meaning of section 18 of the 1985 Act.

37. We agree with Mr Brierley that *Morshead* can be distinguished from the facts of the subject case. In particular in *Morshead* Article 16 obliged to members to contribute capital and management funds including any form of sinking fund in order to contribute towards all fees, costs, and other expenses incurred in the implementation of the Company's objects. Members resolved to establish a fund, 'The 2007 Recovery Fund' and members were called upon to pay two instalments. It appears the funds raised were proposed to be used to fund future anticipated service charge expenditure and other costs which the company might incur.

    Evidently the instalments so paid were to be credited to the service charge account so as to extinguish the liability to pay an interim service charge.

    The issue before the court was whether the two instalments were payable pursuant to Article 16 or whether they were to be regarded as sums paid on account of service charges within the meaning of sections 18 and 27A of the 1985 Act.

The Court held the instalments were payable under Article 16 as a matter of contract as between the company and its members and were not payable 'by a tenant of a dwelling as part of or in addition to the rent'.

The Court held that the company was entitled, pursuant to the resolutions, to the money claimed from Mr Di Marco as a member of the company.

38. In the present case there was no evidence put before us of any resolutions of the Respondent calling on members to make payments under Article 11. There were simply quarterly demands for payments on account which sums were to be used by the Respondent to provide the services specified in the leases. The leases provide for quarterly payments on account and we thus conclude that the sums demanded were demanded pursuant to the leases and not pursuant to Article 11. We find that the sums collected were collected as advance payments on account of the obligation on lessees to pay service charges. The sums so collected were service charges within the meaning of section 18 of the 1985 Act and thus are subject to the regime concerning service charges set out in the 1985 and 1987 Acts.

The service charges in issue

39. In his application and in his statement of case Mr Brierley sought to challenge a number of service charges in the accounts (such as they are) for 2010, 2011 and 2012.

40. Mr Brierley did not take an assignment of the lease of his flat until 29 August 2012 and so the first year that he will have an interest in the amount of service charges payable will be 2012.

41. Mr Brierley is an accountant and having studied the accounts for 2010 and 2011 and tried to reconcile them with corresponding bank statements he came across a number of anomalies and also noted the absence of supporting invoices for some of the expenditure claimed. It was clear to us that the accounts are not overly accurate. For example in the 2011 account an expense of £48 recorded as 'Wages' was later said to be a sum of £25 paid to a lessee and £23 paid for hire of a room. In the 2012 accounts an expense of £60 recorded as 'Wages' was later said to be an expense of £60 for hire of a room.

42. There is clear authority that in proceedings pursuant to section 27A of the 1985 Act it is simply not sufficient for an applicant to assert lack of supporting invoices. There is a burden on an applicant to make a prima facie positive case questioning the expenditure challenged. In relation to 2010 and 2011 Mr Brierley had no evidence to support his challenges and was not even able to make out a prima facie case.

43. One of the challenges in 2010 concerned major works and Mr Brierley asserted a failure on the part of the Respondent to carry out a consultation exercise pursuant to section 20 of the Act. That may well be right because until these proceedings got underway it appears that the directors of the Respondent and Mr Jones were totally unaware of the statutory regime applicable to residential service charges. However we bear in mind that Mr

Brierley's predecessor in title had been a lessee for many years and was also a director of the Respondent. We infer that as a director that person acquiesced in the manner in which the development was run. No evidence was put before to us the effect that that person raised any objections to the costs being incurred or claims to repayment and if any sums were to be found to be repayable they would be repayable to the predecessor in title and not to Mr Brierley. For these reasons we declined to make determinations on the expenditure incurred in 2010 and 2011.

44. As to 2012 the service charges in issue as at the hearing were:

The rentcharge of £315.00;

An expense of £3,432.00 described as a bad debt; and

Accountancy and management of £4,809.00.
We shall take each in turn.

The rentcharge £315

46. The rent charge is payable by the Respondent pursuant to the conveyance dated 30 April 1974.

47. The Respondent submitted that it is a service charge expense falling within paragraph 1 of the Seventh Schedule to the lease which refers to *"... all existing and future rates taxes assessments and outgoings now or hereafter imposed on or payable in respect of the Maintained Property"*

48. Mr Brierley disagreed and submitted that it did not fall within that paragraph. Mr Brierley submitted that the outgoings referred to in paragraph 1, properly construed, are those associated with the maintenance, insurance, cleaning etc of the Maintained Property. He said rent charge expense is neither an administration cost nor a maintenance cost; rather it is a cost of the Respondent holding its investment in the freehold. Mr Brierley also submitted there was ambiguity and that the lease should be construed in favour of the leaseholder.

49. We prefer and accept the submissions made on behalf of the Respondent. We reject the submissions made by Mr Brierley because paragraph 1 of the Seventh Schedule is a standalone provision and other paragraphs deal with such matters as insurance, maintenance, repair and administration costs. The 'Maintained Property' is co-extensive with the freehold interest. We are satisfied that it is an outgoing payable in respect of the Maintained Property. We find there is no ambiguity.

50. We are reinforced in our conclusions because the scheme set up in the early 1970s was that the Respondent was to be controlled by the lessees, was to acquire the freehold and was to provide the services to manage the development for the common good. It was not intended to provide commercial services, make profits or buy and sell investments. Apart from the modest ground rent income of £315 per year, its only source of income would be the service charge. We find it cannot have been intended that all

of its only ground rent income would be expended on the rentcharge. It is inevitable that in set ups such as these there will often be some expenditure that a company will incur which for one reason or another cannot properly be put through the service charge account.

51. We are thus satisfied that rentcharge is an item of service charge expenditure which falls within paragraph 1 of the Seventh Schedule.

52. In cash terms the point may be a little academic. Mr Brierley's one 21st contribution to the rentcharge is £15 for the year. The ground rent payable by him is also £15 for the year. It appears that, as a matter of policy, the Respondent has not sought payment of the ground rent from Mr Brierley. This may have been because the rentcharge was paid out of the service charge. If the rentcharge was not payable out of the service charge the Respondent would require ground rents to be paid so that it could discharge its liability to pay the rentcharge.

53. This Tribunal does not have any jurisdiction in respect of ground rents. Mr Brierley says that he has made a payment to the Respondent in respect of the ground rent for 2012. He asked that if the policy of the Respondent was not to demand the ground rents of its lessees that sum should be reimbursed to him. We have no jurisdiction to make an order to that effect. All we can do is observe that Mr Brierley's request does not appear to be unreasonable.

Bad debt £3,432.00

54. Evidently in 2009 a fire risk assessment was carried out by Panache Fire Services and certain recommendations were made. One of the former directors, then acting as chairman, now deceased, took it upon himself to procure that a fire alarm system was installed in the development along the lines of those recommendation. This was done in January or February 2010. It is not immediately clear how the expense was dealt with in the accounts, but it appears it may have been treated as an asset of the company.

55. In 2011 Mr Jones arranged for a different Fire, Health & Safety adviser, a Mr Swift, to examine the system. Mr Swift came to the conclusion that part of the system was flawed and should be removed. This was done. At the direction of the directors Mr Jones was instructed to try to recover some of the costs incurred from Panache. To this end Mr Jones raised an invoice in the sum of £3,432.00 and sent it to Panache. It was not paid. Panache was regarded as a debtor. Proceedings were commenced in the county court to try to recover the money. The claim failed. According to an email from Mr Jones the claim failed, not on the facts of the flawed risk assessment, but on the basis that the directors concerned should have questioned the risk assessment or had it looked at before placing an order with Panache and that it was at that point in time that the contract was made with the consequence there was no recourse.

56. The claim having failed the unpaid invoice issued to Panache was treated as a bad debt in the books of the company, as a matter of bookkeeping practice.

57. Of course there is a difference between trading accounts or corporate or tax accounts and service charge accounts. What we are concerned with is the amount of the service charge expenditure reasonably and properly incurred in 2012. There is no doubt that the Respondent did not incur an expense of £3,432 in 2012 in connection with the fire alarm system. Even if such an expense was incurred in 2012 on a flawed system we find that it was not reasonably incurred because it is not reasonable to incur such an expense on a flawed system which is not fit for purpose.

58. For the reasons set out above we find that Mr Brierley is not liable to contribute to the bad debt of £3,432. He is entitled to a rebate of one 21st of that sum, namely £163,43.

Accountancy and management of £4,809.00

59. Principally these were the fees invoiced by Mr Jones for the year 2012.

60. In addition to his general duties akin to those of a managing agent Mr Jones oversaw a project with National Grid concerning the installation of new gas supply lines to each of the flats within the development. Evidently a modest fee was charged for his services.

61. Evidently the project and detailed design solutions was highly controversial with different persons involved having quite firm views. Mr Brierley was highly critical of the role played by Mr Jones which he, Mr Brierley, considered to be inept and disingenuous when he evidently led National Grid and its contractors to believe that he, Mr Jones, represented the lessees within the development. Mr Brierley's evidence on this issue was not contested. In so far as may be relevant we find that Mr Jones did not provide an effective service to the Respondent in respect of this service. This must be reflected in the reasonableness of the fees paid to TAB Services for the year in question.

62. Of more significance is the billing for Mr Jones services. Initially TAB Services was registered for VAT. In 2011 Mr Jones monthly fee was £333.00 + VAT of £66.60, a total of £399.60. An example of his December 2011 VAT invoice is at [5/146].

63. Mr Brierley noticed that in 2012 TAB Services were still billing £399.60 per month but the invoices were no longer VAT invoices. He suggested that there were two possibilities. First, the 2012 invoices were intended to be VAT invoices but were deficient or secondly TAB Services had de-registered for VAT, so that it was no longer obliged or entitled to charge VAT but had put up its price by a sum equal to what the amount of VAT which had been charged previously. At the hearing the directors present were unable to explain what had occurred and wished to consult with Mr Jones over night to ascertain the answer.

64. On the morning of the second day Mr Ray produced an email from Mr Jones which is timed/dated 19:24 05 November 2013. In that email Mr Jones explains that TAB Services had divided up its business so that it was no longer required to be registered for VAT. Mr Jones went on to say that:

"... I should have highlighted to the board that the charge was to increase but as the effect was cost neutral to St Bernards Court it was overlooked by me. Meetings were infrequent where I should have raised this and other agenda items, such as this and the gas installations, became overwhelming and for this I can only apologise." [sic]

65. Against this rather unattractive background we have to consider whether the costs paid to TAB Services for Mr Jones services were reasonable in amount. At a total cost for the year of £4,809 the unit cost of one 21st amounts to £229.00, with no VAT payable. In the light of the poor quality of service provided by a person with no knowledge of the statutory regulation of residential service charges we find that sum to be unreasonably high and outside the bracket that could be considered within the range for managing a block such as the subject development in High Wycombe. Later in this decision reference will be made to Mr Kurz whose company is Neil Douglas Block Management. We found Mr Kurz to be an experienced local managing agent. Mr Kurz told us that if appointed manager his unit fee would be £165, with no VAT payable.

66. We considered Mr Kurz' fee quote to be especially competitive and at the lower end of the bracket. Doing the best we can with the imperfect materials before us and bearing in mind that Mr Jones was also providing some bookkeeping and corporate accounting/company secretarial services and got involved to some extent on the National Grid issue on behalf of the Respondent we find that a reasonable unit fee for 2012 would not exceed £200, with no VAT payable.

67. In consequence the total management fee for the year should not exceed £200 per unit. Mr Brierley is entitled to a refund of £29.

68. We have mentioned that the way in which the directors operated the accounts was to set a sum to be paid on account and then at year any if the actual sum incurred was less than paid on account the surplus was paid into a reserve fund. The parties were agreed that for 2012 Mr Brierley and his predecessor in title had paid on account the sum of £750, the same as all other lessees. So as not to disturb the fair and equal distribution of the reserve fund held we find that the most effective way to deal with our findings on the 2012 service charges in issue, is to determine that the Respondent is to repay to Mr Brierley a total of £192.43. This is made up as to:

Rebate reference the Bad Debt	£163.43
Rebate reference the cost of management	£ 29.00
	£192.43

Obviously it is not open to the Respondent to utilise the reserve funds held to pay this sum.

69. Before moving onto the section 24 application, there a couple of points raised by Mr Brierley in his statement of case that we should mention.

70. First at [4/12] Mr Brierley sought a protective determination over any termination costs that the Respondent might incur bringing to an end any contract of employment that Mr Jones might have. In the event the evidence was that Respondent did not enter into a contract of employment with Mr Jones; instead the Respondent entered contracted with TAB Services for Mr Jones to provide services. In any event we do not have jurisdiction to make the protective determination sought.

71. Next, at [4/29] Mr Brierley states that he has arranged for the loft area above his flat to be insulated at a cost of £400. He seeks reimbursement of this expenditure. We do not have jurisdiction to make a determination on that or to order reimbursement. In case it may be of assistance to the parties we observe that the loft space above Mr Brierley's flat is not demised to him and it does not appear that the lease grants him the right or obligation to lay insulation. However, Mr Brierley said, and it was not challenged that before laying his insulation it was necessary to remove a small layer of rather old fashioned insulation. We infer this may have been laid by the developers in the early 1970s. The Respondent may have some obligations to maintain the insulation in good and effective order. Significant technological and environmental progress has been with the quality and importance of good and effective insulation in recent years. If the loft spaces are not presently insulated to an appropriate and effective level, the manager we propose to appoint may wish to consider what steps (if any) should be taken.

The section 24 application – the appointment of a manager

72. Mr Brierley served a preliminary notice pursuant to section 22 of the 1987 Act listing a number of complaints about the management of the development. It is dated 11 may 2013. He asserts that none of them have been put right. The Respondent does not contend otherwise.

Mr Brierley has made an application pursuant to section 24 of the 1987 Act for the Tribunal to appoint a manager. He has nominated Mr Neil Douglas Kurz to the manager to be appointed.

73. Information about Mr Kurz and his experience and professional insurance cover is included in the hearing file. Mr Kurz attended the hearing and on the second day he answered a number of questions put to him by members of the Tribunal and also the three directors of the Respondent who were present.

74. The three directors present said they could only speak for themselves and not their fellow (absent) directors. Mr Ray and Mr Tucker said they would not oppose the appointment of Mr Kurz as manager. Mr Ross said he was not sure but he did not wish to put any reasons forward as to why not.

75. On the evidence before us we were satisfied that:

75.1 The Respondent has not managed the development in accordance with the terms of the leases and in compliance with the statutory control of residential service charges, or in compliance with the Service Charge Residential Management Code 2nd edition published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State for England pursuant to section 87 Leasehold Reform, Housing and Urban Development Act 1993;

75.2 Service charge funds have not been held in a designated trust account as provided for in section 42A of the 1987 Act and that inappropriate sums have been drawn from the reserve fund created by the Respondent, namely £3,000 to pay for legal services in connection with these proceedings;

75.3 Annual accounts have not been audited by a competent chartered accountant and have not been certified;

75.4 The directors have not been able to procure effective management of the development in that they engaged the services of Mr Jones to effectively act as a managing agent when he did not possess the necessary skills and experience to undertake that role;

75.5 There is little prospect of directors bringing about a marked change in effective management going forward. Although shortly prior to the hearing the Respondent approached a firm of managing agents, Campsie Property Consultants based in Windsor and sought a proposal from them, even if appointed executive control and decision making would remain with directors. We saw little appetite for change and it seems that some directors would prefer the current informal arrangements to continue.

75.6 It is just and convenient to make an order to appoint a manager in all of the circumstances of the case.

76. We have no doubt that since the development was created in the 1970s a limited number of lessees and directors have given generously of their time and energy to run the development. Unfortunately some of those have passed on and others are now frail to take up the baton. Further those concerned have not sought appropriate professional advice and have not kept up to date with the stringent statutory controls.

77. We find that the appointment of a suitably experienced manager in post for two years will enable the lessees to experience the proper management of the development and the modern ways of doing so such that at the end of the two years directors then in post may be able to make an informed appointment of managing agents as they may see fit.

78. We have decided to appoint Mr Kurz as manager because he impressed us as being a person of appropriate local experience, expertise and knowledge.

We considered that Mr Kurz unit fee of £165 to be reasonable and he told us that should be need to register for VAT he would absorb the amount of VAT payable.

79. Mr Kurz appointment is subject to the Directions and Schedule of Functions set out in the Schedule to this Decision, in which Mr Kurz is referred to as the Manager.

Fees and costs

Section 20C application

80. Mr Brierley made an application pursuant to sections 20C of the 1985 Act.

Mr Ray said that the Respondent had incurred legal of £11,088 of which £3,000 had been paid by drawing down from the reserve fund.

Mr Ray opposed the application even though he was unable to identify any provision in the lease that would entitle the Respondent to put costs of proceedings such as these through the service charge account.

81. On an application under section 20C it is not necessary for the Tribunal to construe the lease to determine whether it does or does not entitle a landlord to pass through the service charge account the costs of proceedings such as these. What we have to consider is whether if the lease does so provide is it just and equitable to make an order that it may not do so in whole or in part?

82. We have decided to make an order under section 20C in this case because it is just and equitable to do so. The applications made by Mr Brierley were meritorious for the most part and he was fully justified in bringing them. The Respondent has been found wanting in a number of important respects.

Fees and costs

83. Mr Brierley made an application that we require the Respondent to reimburse him the fees of £500 paid by in connection with his applications and an application for costs being out of pocket expenses incurred by him in connection with the proceedings, mostly copying, stationery and postage.

Having discussed matters it was reported to us that the parties had arrived at a compromise settlement. We were told that the parties had agreed that Mr Brierley would withdraw his applications in return for a promise that the Respondent would not make a call on him as a member of the company under Article 11 in respect of the legal costs incurred or to be incurred in connection with these proceedings.

We record what we were told for the sake of good order.

On the basis of the above Mr Brierley withdrew his applications and we have made orders that there be no orders as to reimbursement of fees and/ or costs.

84. The relevant statutory provisions we have taken into account in arriving at our decisions are set out in the Appendix below.

Judge John Hewitt
22 November 2013

The Schedule

Directions and Schedule of Functions and Services

Directions

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property or the Respondent.

2. That no later than 14 days after the date of this order the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicants and the Respondent shall transfer to the Manager all the accounts, books, records and funds (including without limitation, service charge reserve fund). The Respondent shall procure that Mr Jones complies with this direction.

3. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon 1 December 2013 become rights and liabilities of the Manager.

4. The Manager shall account to the Respondent for the payment of ground rent received by him and shall apply the amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases

5. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of Functions and Services set out below

6. By no later than 1 December 2014 the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the Property up to that date.

7. The Manager shall be entitled to apply to the Tribunal for further directions as he shall see fit.

8. The Manager shall procure that the fact of the order by which he is appointed is registered in accordance with the provisions of the Land Charges Act 1972.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

12. Maintain appropriate building insurance for the Property. Ensure that the Manager's interest is noted on the insurance policy.

Service charge

2. Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.

3. Demand and collect ground rents, service charges, insurance premiums and any other payment due from the lessees. Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent. The Manager shall ensure that the annual rentcharge is paid to the party entitled to it.

4. Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

5. Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts are to be certified by an external auditor only if so required by the Manager.

6. Maintain efficient records and books of account which are open for inspection. Produce for inspection, receipts or other evidence of expenditure.

7. Maintain on trust an interest bearing account/s at such bank or building society as the manager shall from time to time decide into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.

8. All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution of Chartered Surveyors.

Maintenance

13. Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.

10. The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondent and the lessees.

11. The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.

Fees

12. Fees for the above mentioned management services will be a basic fee of £165 per annum per flat. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.

13. Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to such charges as may reasonably be incurred by engaging the relevant professional from such architects, surveyors, or other appropriate person in the administration of a contract for such works.

14. Project management and supervision, preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for a time basis at a rate not exceeding £25 per hour.

15. An additional charge for dealing with solicitors' enquiries on transfer will be made at a fee of £130 with a fee for any additional set of enquiries on a time related basis at £25 per hour, payable by the outgoing lessee

Complaints procedure

16. The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.

The Appendix

Statutory Provisions

Landlord and Tenant Act 1985

18.— Meaning of "service charge" and "relevant costs".

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose—

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

19.— Limitation of service charges: reasonableness.

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(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 the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

(2A)-(3) (4) ... [repealed]

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.

20C.— Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court residential property tribunal or leasehold valuation tribunal or the First-tier Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken
into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

27A Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).
(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Landlord and Tenant Act 1987

21.— Tenant's right to apply to court for appointment of manager.
(1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to the appropriate tribunal for an order under section 24 appointing a manager to act in relation to those premises.

(2) Subject to subsection (3), this Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.

(3) This Part does not apply to any such premises at a time when—

(a) the interest of the landlord in the premises is held by–

(i) an exempt landlord or a resident landlord, or

(ii) the Welsh Ministers in their new towns residuary capacity,

(b) the premises are included within the functional land of any charity.

(3A) But this Part is not prevented from applying to any premises because the interest of the landlord in the premises is held by a resident landlord if at least one-half of the flats contained in the premises are held on long leases which are not tenancies to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) applies.

(4) An application for an order under section 24 may be made—

(a) jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section, and

(b) in respect of two or more premises to which this Part applies; and, in relation to any such joint application as is mentioned in paragraph (a), references in this Part to a single tenant shall be construed accordingly.

(5) Where the tenancy of a flat contained in any such premises is held by joint tenants, an application for an order under section 24 in respect of those premises may be made by any one or more of those tenants.

(6) An application to the court for it to exercise in relation to any premises any jurisdiction to appoint a receiver or manager shall not be made by a tenant (in his capacity as such) in any circumstances in which an application could be made by him for an order under section 24 appointing a manager to act in relation to those premises.

(7) References in this Part to a tenant do not include references to a tenant under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

(8) For the purposes of this Part, "appropriate tribunal" means—

(a) in relation to premises in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to premises in Wales, a leasehold valuation tribunal.

22.— Preliminary notice by tenant.

(1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on:

(i) the landlord, and

(ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.

(2) A notice under this section must—

(a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which any person on whom the notice is served may serve notices, including notices in proceedings, on him in connection with this Part;

(b) state that the tenant intends to make an application for an order under section 24 to be made by the appropriate tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with;

(c) specify the grounds on which the court would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;

(d) where those matters are capable of being remedied by any person on whom the notice is served, require him, within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and

(e) contain such information (if any) as the Secretary of State may by regulations prescribe.

(3) The appropriate tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person, but the tribunal may, when doing so, direct that such other notices
are served, or such other steps are taken, as it thinks fit.

(4) In a case where—

(a) a notice under this section has been served on the landlord, and

(b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage, the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.

23.— Application to court for appointment of manager.

(1) No application for an order under section 24 shall be made to the appropriate tribunal unless—

(a) in a case where a notice has been served under section 22, either—

(i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the person required to take steps in pursuance of that paragraph having taken them, or

(ii) that paragraph was not applicable in the circumstances of the case; or

(b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either—

(i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or

(ii) no direction was given by **[** the tribunal **]** **3** when making the order.

24.— Appointment of manager by a tribunal .

(1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—

(a) such functions in connection with the management of the premises, or

(b) such functions of a receiver, or both, as the tribunal thinks fit.

(2) The appropriate tribunal may only make an order under this section in the following circumstances, namely—

(a) where the tribunal is satisfied—

(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii) ...[repealed]

(iii) that it is just and convenient to make the order in all the circumstances of the case;

(ab) where the tribunal is satisfied—

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(aba) where the tribunal is satisfied—

(i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(ac) where the tribunal is satisfied—

(i) that [any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

(ii) that it is just and convenient to make the order in all the circumstances of the case; or

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(2ZA) In this section "relevant person" means a person—

(a) on whom a notice has been served under section 22, or

(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

(a) if the amount is unreasonable having regard to the items for which it is payable,

(b) if the items for which it is payable are of an unnecessarily high standard, or

(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4) An order under this section may make provision with respect to—

(a) such matters relating to the exercise by the manager of his functions under the order, and

(b) such incidental or ancillary matters, as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide—

(a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;

(b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
(c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

(d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.

(7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—

(a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

(b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

(8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.

(9A) The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—

(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and

(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

(10) An order made under this section shall not be discharged by the appropriate tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.