



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **BIR/00CS/LAM/2014/0002**

**Property** : **Flats 1-12 Carver Court, Wake  
Green Road, Tipton, West  
Midlands, DY4 0AT**

**First Applicants** : **Mr J Salmon and Mrs M Salmon**

**Second Applicant** : **Mr G Moran**

**Respondent** : **Mr J Carver**

**Representative** : **Swaine Allen Solicitors**

**Type of Application** : **Under Section 24 of the  
Landlord and Tenant Act 1987  
for an order appointing a  
manager and under section 20C  
of the Landlord and Tenant Act  
1985**

**Tribunal Members** : **Judge S McClure  
D Satchwell FRICS**

**Date and venue of hearing** : **14 January 2016, Birmingham**

**Date of decision** : **8 February 2016**

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**DECISION OF 9 JULY 2015 AS REVISED ON 8 FEBRUARY 2016**

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### **Decision of the tribunal**

- (1) The decision of 9 July 2015 is revised and is amended as follows:
  - (a) Under 'Decision of the Tribunal' on page 2 at paragraph (2), the date of the Order for the Appointment of Manager is amended to 14 January 2016.
  - (b) Paragraphs 23 - 25 in the decision of 9 July 2015 are revoked and replaced by paragraphs 33 - 37 below.
- (2) The management order of 9 July 2015 is amended as set out in the attached management order made on 14 January 2016.

### **The application**

1. On 17 March 2014, the Applicants submitted their application for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987, case number BIR/00CS/LAM/2014/0002. The block in question comprised 12 flats, 4 shops, and areas common to all 16 properties.
2. On 26 November 2014, the Respondent made an application to the Tribunal in respect of arrears of service charges against Mr and Mrs Salmon, case number BIR/00CS/LIS/2014/0057.
3. On 3 December 2014, the Respondent's County Court money claim in respect of arrears of service charges against the leaseholder of Flat 6 Carver Court, Mr Moran, was transferred to the Tribunal, case number BIR/00CS/LIS/2014/0059.
4. On 23 February 2015, Mr Moran's application to be joined as an Applicant to the appointment of manager application was granted by the Tribunal.
5. Subsequently, the Tribunal ordered that the three applications be heard together, and directions were made accordingly.
6. The applications were heard on 14 and 15 May 2015. All parties attended the hearing, or were represented. The proposed manager in respect of the section 24 application, Mr Dening, was present for the latter part of the hearing.
7. Mr Carver's applications in respect of unpaid service charges against Mr and Mrs Salmon, and in respect of unpaid service charges and administration charges against Mr Moran, were unsuccessful.

8. The section 24 application for appointment of a manager was successful, and Mr Dening was appointed by the Tribunal as manager.
9. The decisions in respect of the three applications were dated 9 July 2015, and sent to the parties and Mr Dening on that date.
10. On 7 August 2015, Mr Dening wrote to the Tribunal stating that he was unable to take up the post of manager on the basis of the terms set out in the management order of 9 July 2015. He detailed his objections to certain of the terms, and he set out his proposed amendments.
11. By letter dated 22 August 2015 the Applicants, Mr and Mrs Salmon, applied for permission to appeal against the two decisions of the Tribunal of 9 July 2015 to which they were parties, case numbers BIR/00CS/LAM/2014/0002 and BIR/00CS/LIS/2014/0057. Whilst Mr and Mrs Salmon were happy with the Tribunal's substantive decision in respect of the service charge application, which held that the service charge demands were invalid and so no service charge was owed for the relevant period, they did not agree with certain of the Tribunal's findings, including the Tribunal's finding as to how the service charge should be apportioned between the flats and the shops.
12. On 30 November 2015 the Tribunal determined that it intended to review the decision of the Tribunal of 9 July 2015 in respect of the appointment of manager application number BIR/00CS/LAM/2014/0002, as provided for by rules 53 and 55 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
13. On the same date the Tribunal determined that it intended to stay the application for permission to appeal in respect of service charge decision number BIR/00CS/LIS/2014/0057.
14. Representations in respect of the review of the appointment of manager decision were heard on 14 January 2016.

### **The law**

15. Rule 3(1) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the Rules') requires that the Tribunal must deal with cases fairly and justly - the overriding objective.
16. Rule 3(3) provides that the Tribunal must seek to give effect to the overriding objective when it exercises any power under the Rules or interprets any rule.

17. Rule 53 provides that upon receiving an application for permission to appeal, the Tribunal must first consider, taking into account the overriding objective in rule 3, whether to review the decision in accordance with rule 55.
18. Rule 55 provides that a Tribunal may only undertake a review of a decision, if it is satisfied that a ground of appeal is likely to be successful.

### **The hearing**

19. The Applicants and Mr Dening appeared in person. The Respondent was represented by Mr Mitchell of counsel.
20. At the hearing, and after discussion between the parties and Mr Dening, Mr Mitchell informed the Tribunal that the matters in dispute were those set out in Mr Dening's letter to the Tribunal of 25 September 2015 with regard to paragraph 8 of the management order dated 9 July 2015, and the Service Charge schedule annexed to the 9 July 2015 management order.
21. Mr Mitchell further informed the Tribunal that Mr Dening's proposed amendment to Clause 26 was agreed between the parties, and that the whole of the 4 proposed new paragraphs set out in Mr Dening's letter under 'Additional Clauses' were agreed, save that it was not agreed by Mr and Mrs Salmon that the costs of the annual accounts should be met from the service charge.
22. Mr Dening's proposed amendments to the Service Charge schedule were not agreed. After all parties made submissions on the Service Charge schedule amendments, including an additional proposal from Mr Dening not set out in his 25 September 2015 letter, the parties informed the Tribunal that they did not oppose Mr Dening's proposed amendments to the Service Charge schedule.
23. The Tribunal heard submissions in respect of the two remaining matters in dispute, being the amendments to paragraph 8 and the issue of who should be responsible for the payment of the annual accounts.
24. The Tribunal also heard submissions in respect of the Applicants' section 20C Application, and an application by Mr and Mrs Salmon for costs as provided for by Regulation 13 of the Rules.
25. At the hearing, the Tribunal told the parties of its decision in respect of the terms of the management order, and reserved its decision in respect of the S20C and the costs applications. Thus, the parties had a record of the terms of the management order on 14 January 2016, prior to their

agreed commencement date of the management order of 1 February 2016.

### **The management order - agreed matters**

26. The parties agreed to an amended commencement and end date for the management order, and the Tribunal amended the 9 July 2015 order accordingly.
27. The parties agreed to the revised amendments proposed by Mr Dening and the Tribunal amended the Service Charge schedule accordingly.
28. The parties agreed to the Additional Clauses proposed by Mr Dening, save for who is responsible for payment of the annual accounts, and the Tribunal amended the 9 July 2015 accordingly, now paragraphs 29-32 of the amended management order.

### **The management order - matters in dispute**

29. Mr Dening proposed that the cost of the annual accounts (see paragraph 29 of the amended management order) should be recovered from the service charge account. Mr Mitchell was in agreement. Mr Moran stated that he did not have a view on that point. Mr Salmon stated that as the lease did not provide for annual accounts, then payment for annual accounts should not be the responsibility of the leaseholders. Mr Salmon further stated that he would not strongly oppose an order that payment is borne by the leaseholders, but he wanted to put his argument to the Tribunal for our consideration.
30. The Tribunal finds that the fact that a payment is not provided for in the lease is not fatal to a finding that such a payment can be ordered by the Tribunal in the context of a section 24 application for appointment of a manager. All parties agreed, or at least did not dispute, that annual accounts rather than accounts every three years, were sensible. The usual situation is that the leaseholders pay for such accounts by way of the service charge, and the Tribunal found nothing in Mr Salmon's argument, or otherwise, to find that a different course should be taken. The Tribunal finds that the cost of the annual accounts are to be recovered from the service charge. Paragraph 29 of the amended management order is drafted accordingly.
31. Mr and Mrs Salmon and Mr Moran agreed the terms of Mr Dening's proposed amendment to paragraph 8 of the 9 July 2015 order. Mr Mitchell opposed the amendment. He argued that the amendment as drafted was too wide. He argued that a more restrictive amendment would remedy the mischief Mr Dening complained of with regard to the balance of the service charge accounts for Mr and Mrs Salmon and Mr Moran. He argued that it was more appropriate for matters such as

ongoing service charge disputes to be dealt with by way of a further application to the Tribunal.

32. The Tribunal was not persuaded by Mr Mitchell's arguments. Mr Mitchell was not able to tell us of any specific prejudice to Mr Carver were we to make the amendment proposed by Mr Dening. We could find no such prejudice. We find it significant that by the date of the hearing, almost 6 months after the date of the Tribunal's decision in the service charge application in which we found no service charge to be owed by Mr and Mrs Salmon for the relevant years, a recent service charge statement showed Mr and Mrs Salmon as having significant service charge arrears, which can only be attributed to the period for which we found no service charge was owed. We are persuaded by Mr Dening's argument that he needs the powers set out in his amended paragraph 8 to ensure that he is able to deal with issues involving parties other than the leaseholders, such as the apparent error in the service charge statement. The Tribunal finds that it is reasonable to amend paragraph 8 of the 9 July 2015 management order as proposed by Mr Dening.

#### Application under S20C

33. The Respondent confirmed at the 14 and 15 May 2015 hearing that he would not seek to recover his legal costs to date through the service charge. Today, Mr Mitchell submitted that the Respondent's costs of today's hearing should be recovered from the service charge and, therefore, no order should be made under section 20C. He argued that the Respondent was not the cause of today's hearing and therefore he should not be responsible for his costs of the hearing.
34. The Tribunal finds that today's hearing was necessary in order that the Tribunal's decision of 9 July 2015 was able to be effective, in view of the fact that Mr Dening had stated that he would not take up the role of manager on the terms of the management order of 9 July 2015. The Applicants were successful in their substantive application; today's hearing was necessary to give effect to the appointment of manager decision; and neither Applicant acted in any way following the 9 July 2015 decision so as to rebut the presumption of a section 20C order being made following a successful application. For these reasons, the Tribunal grants the section 20C Application and orders that no part of the Respondent's costs incurred in connection with the proceedings before the Tribunal are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

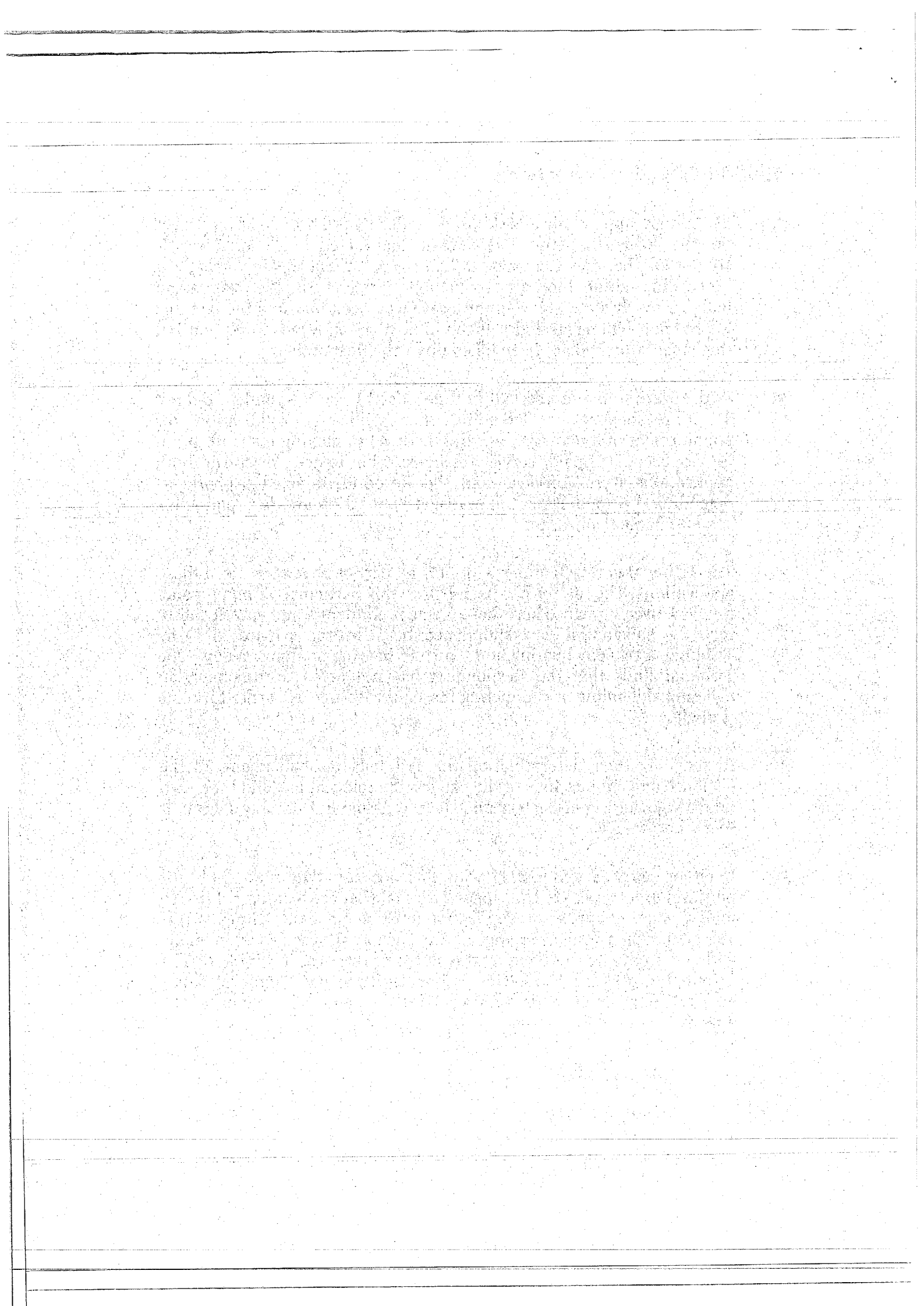
### Application under Regulation 13

35. Mr Salmon applied for a costs order under Regulation 13 of the Rules, on the basis that the Respondent had acted unreasonably. He submitted that the Respondent had acted unreasonably during the proceedings citing, inter alia, as examples the fact that the Respondent had previously stated Mr Salmon's case was vexatious, and the fact that Mr Salmon had suggested a meeting post the July 2015 decision but that suggestion had not been taken up by the Respondent.
36. With regard to the test set out in Rule 13(1)(b), the Respondent did not act unreasonably in defending the Applicants' application for appointment of a manager, nor did he do so in making his application in respect of unpaid service charges. The issues raised in both applications were complex, and the Respondent acted properly in defending the appointment of manager application and in bringing his service charge application.
37. The Tribunal is very familiar with how all parties have conducted these applications. The matter has been before this particular Tribunal panel for well over a year. There have been preliminary and interlocutory matters, substantial correspondence between the parties and the Tribunal, a two day hearing and a further hearing of almost a day. The Tribunal finds that the Respondent has not acted unreasonably in bringing, defending or conducting these proceedings. No order for costs is made.
38. In reaching their determination the Tribunal has had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert Tribunal but not any special or secret knowledge.
39. If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision (regulation 52 (2) of The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013) stating the grounds upon which it is intended to rely on in the appeal.

**Name:** Judge S McClure

**Date:** 8 February 2016







IN THE MIDLAND RESIDENTIAL PROPERTY FIRST-TIER TRIBUNAL

Case No: BIR/00CS/LAM/2014/0002

Property: Carver Court, Wake Green Road, Tipton, DY4 0AT

Applicants: Mr J and Mrs M Salmon

Section 24, Landlord and Tenant Act 1987

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Order for the Appointment of a Manager. The date of this Order is 1 February 2016.

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**Preamble**

UPON the Applicants having applied for the appointment of a manager under Pt.II, Landlord and Tenant Act 1987

AND UPON the First-tier Tribunal (Property Chamber) ("the Tribunal") being satisfied that the Applicants are entitled to so apply and that the jurisdiction to appoint a Manager is exercisable in the present case

AND UPON the Tribunal being satisfied that the conditions specified in s.24, Landlord and Tenant Act 1987 are met; such that it is just and convenient to appoint a manager

AND UPON the management order of 9 July 2015 being revised by the Tribunal at a hearing on 14 January 2016

IT IS ORDERED THAT

**The Manager**

1. Mr Peter Neville Dening, FRICS, FIRPM, MARLA, is appointed as Manager of the Property.
2. The appointment shall commence on 1 February 2016 and shall continue until 30<sup>th</sup> June 2018 (both dates inclusive).

**The Property**

3. Includes all those parts of the Property known as Carver Court, Wake Green Road, Tipton, DY4 0AT including the residential and the commercial parts and the common parts registered with the land registry under title number WM421249.

**Functions and duties of the Manager**

4. The Manager shall manage the Property in accordance with (in order of priority):
  - (a) The following provisions of this Order;
  - (b) The respective obligations of all parties – landlord and tenant (both residential and commercial) – under the leases
  - (c) The duties of the Manager as contained in the Service Charge Residential Management Code(2009)("the Code"), published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State under s.87, Leasehold Reform Housing and Urban Development Act 1993;

(d) Should the Code be amended, replaced or otherwise be superseded during the currency of this Order, the Manager shall manage the Property in accordance with the amendments, replacements, etc.

5. The First-Tier Tribunal notes that the Manager is a partner in the surveying firm of Pennyquick Collins. For the avoidance of doubt, the Manager is entitled to delegate function under this Order to other partners or employees of the firm, save that any persons delegated will not acquire any rights or functions under this Order, but will merely be permitted to assist the Manager in the discharge of his functions under this Order.
6. From the first-mentioned date in para.2, above, the Manager will ensure that he has appropriate professional indemnity cover in the sum of at least £10,000,000 and shall on receipt of a written request to this effect, provide evidence of the same to any interested party (whether leaseholder or freeholder) and to the Tribunal, within a reasonable period of time.
7. For the avoidance of doubt, from the date of this Order, no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.
8. The Manager may take any legal action (including applications, but not exclusively, to the First-tier Tribunal, Upper Tribunal, Small Claims Courts and County Courts), against any party to the Lease, or any professional advisor (appointed by or on behalf of the Landlord), both past, current or in the future, whether of the commercial or residential parts of the whole Estate (as elsewhere described), where the Manager has reasonable grounds to believe that as breach of covenant or contract or tortious liability has, is, or may be about to occur. This includes, but is not limited to:
  - (a) legal action to recover monies due from any party
  - (b) legal action to determine that a breach of covenant, contract or tortious liability has, is, or may be about to occur
  - (c) legal action to prevent further occurrences of any breach of covenant, contract or tortious liability
  - (d) any other application to the First-tier Tribunal that the Manager deems necessary in the interests of the effective management of whole Estate.

The costs of any actions, including (but not exclusively) any costs of any application and ancillary costs or expenditure, time taken in the carrying out of an investigation, assembling evidence, seeking and obtaining any appropriate additional advice or representation (legal or otherwise), time attending hearings etc. may all be recoverable, as is reasonable for the action being taken, from and as appropriate:

- (a) The Service Charge
- (b) A Leaseholder who is or has been in Breach of Covenant.
- (c) The Freeholder who is or has been in Breach of Covenant etc.
- (d) Any other third party.
- (e) Or as otherwise directed by the Courts or Tribunal

9. The Manager is empowered to enter into (and to terminate) any contract or arrangement and/or to make any payment or take any step which is necessary, convenient or incidental to the performance of his functions. Any sums due under such contracts or arrangements shall be paid from the monies collected under the terms of this Order. Save that the Manager cannot be required to effect any contract or arrangement where the same would in his reasonable opinion, result in the service charge account going into deficit.
10. The Manager is empowered to make and agree reasonable adjustments and other reasonable compromises with any tenant under a lease (whether of the residential or commercial parts of the Property), in respect of any service charges or other sums payable under the terms of the lease.

#### **Obligations on other parties**

11. Within 28 days of the date of this order, the Respondents will provide the Manager with copies of all books, papers, memoranda, records (including computer records), minutes, correspondence, copy correspondence, e mails and other documents and records which, in the opinion of the Manager, are reasonably necessary for the proper management of the Property
12. Should any documents, or similar, be received by the respondents after the date of this order, they shall forthwith provide a copy to the Manager
13. For the avoidance of doubt, the obligation to deliver up such documents extends only to such documents as are in the power, custody or control of the respondents, or within the power custody or control of their agents, servants or employees.
14. In any event, within 28 days of the date of this Order, the respondents shall give to the Manager details of all monies held by them or their agents, servants or employees, which were received from any leaseholder (including any commercial leaseholder), in respect of the service charge. Such monies must then be paid to the Manager forthwith.
15. From the date of this Order, the Respondent and Applicants, and any other persons holding a leasehold interest at the Property (including any commercial leaseholder) shall give such reasonable assistance to the Manager as he deems necessary for the proper administration and management of the Property. No such party shall interfere or attempt to interfere with the exercise by the Manager of the functions specified in this order. For the avoidance of doubt, this shall include the Respondent co-operating with the Manager in relation to the exercise of a right of re-entry and/or the preparation and service of any notice under s.146, Law of Property Act 1925.
16. From the date of this Order, the respondents and applicants, and any other person holding a leasehold interest at the Property (including any commercial leaseholder) shall on receipt of 48 hours written notice (or forthwith in an emergency) – give the Manager reasonable access to any part of the Property which he might require in order to perform his functions under this Order.
17. From the date of this Order, the Respondent shall not, whether by themselves or an agent, servant or employee, demand any further payments of service charges, administration charges, ground rent or any other monies from any leaseholder (including any commercial leaseholder) at the Property. Such functions are transferred to the Manager forthwith.

18. The obligations contained in this Order shall bind any successors in title and the existence of and terms of this Order must be disclosed to any person seeking to acquire either a leasehold interest (whether by assignment or fresh grant) or the freehold reversion.
19. Any payments made by the Respondent or their agents in respect of insurance premium and utilities which would properly have been recoverable by the Respondent by way of the service charge which has not been demanded from the tenants of the Property shall be paid to the Respondent upon receipt of such sums by the Manager from the tenants of the Property.

#### Finances

20. The service charges shall be apportioned in accordance with the schedule attached hereto.
21. The Manager shall account to the Respondent for any ground rent received from any leaseholder (including a commercial leaseholder). The Manager's fee in respect of ground rent collection is 15% of the rent collected or £6.00 per individual ground rent collected, whichever is the higher, and is payable by the Freeholder or recipient of the ground rent.
22. The Manager shall be entitled to remuneration in the sum of £200.00 per unit plus VAT which is to be paid quarterly in advance on the 1<sup>st</sup> July and each quarter thereafter, in the service charge year from the commencement date of the order, pro-rata as necessary for the period 13 July 2015 - 30 September 2015 with that period to be paid by 28 July 2015, by
  - (a) the owner of each flat unit.
  - (b) the leasehold owners of each commercial unit.
23. Further, where the Manager is engaging in works or entering into a contract which would come within the terms of s.20, Landlord and Tenant Act 1985, he shall be entitled to charge an additional fee calculated on the net contract sum, as follows:
  - (a) 12% up to £20,000.00
  - (b) 10% £20,000.01 - £50,000.00
  - (c) 8% thereafter
24. The Manager may make an additional reasonable charge for any dealings with solicitors in respect of the property.
25. Where the Manager is liable to charge or pay VAT, that may be added to any sum charged in accordance with this Order.
26. The Manager is entitled to recover the reasonable cost of carrying out an Insurance Reinstatement Valuation as and when necessary to do so.
28. Further details regarding the Manager's fees and the terms of his appointment are set out in the letter from Mr Dening to Mr Salmon dated 19 January 2015. Where any term of the 19 January 2015 letter contradicts a term of this Order, the terms of this Order shall prevail.
29. As soon as reasonably may be after the Service Charge year ending on 30<sup>th</sup> June each year when the actual amount of costs expenses outgoings and matters for that Service Charge year has been ascertained the Lessee shall forthwith pay the balance due to the Manager or be credited with any amount overpaid. For the avoidance of doubt, the Accountant's costs

as detailed in Part I of the Eighth Schedule shall be collected annually for each Service Charge year. The costs to be recovered from the Service Charge.

30. The Manager will satisfy the requirement of clause 5 of Part I of the Eighth Schedule by production of an Accountant's statement provided in accordance with Technical Release 3/11 (or as amended) "Residential Service Charge Accounts" issued by the Institute of Chartered Accountants of England and Wales.
31. The Manager may make an interim demand for Service Charge from the date of the Management Order until the next Service Charge due date.
32. For the avoidance of doubt the Manager will not be responsible for any issues of historic neglect and all charges raised and works done under the terms of this Order will relate to the current condition of the Building and Estate/Mansion without any deduction by reason of historic neglect.

#### **Legal and professional costs**

33. The Manager is further directed that he is to be reimbursed in respect of reasonable cost, disbursements and expenses (including, for the avoidance of doubt, the fees of counsel, solicitors and expert witnesses) of and incidental to any application or proceedings, whether in the court or F-TT, to enforce the terms of the leases mentioned above.
34. Further, and for the avoidance of doubt, the aforementioned provisions apply equally to applications or proceedings commenced by the Manager or proceedings to which he is a Respondent.

#### **Liberty to apply**

35. The Manager may apply to the First-Tier Tribunal for further directions, in accordance with s.24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:
  - (a) any failure by any party to comply with an obligation imposed by this Order;
  - (b) for directions generally; and
  - (c) directions in the event that there are insufficient sums held by him to discharge his obligations under this Order and/or to pay his remuneration.

#### **Section 20C, Landlord and Tenant Act 1985**

36. The Respondent shall not be entitled to recover their costs of these proceedings from any Applicant by way of a service charge.

**Name:** Judge S McClure

**Date order made:** 14 January 2016

Service Charge Schedule

Carver Court

BIR/00CS/LAM/2014/0002

(1) The service charge shall be apportioned between:

(a) Expenses relating solely to the flats ("the flat expenses").

(b) Expenses relating solely to the shops, including expenses for the paved area, car park forecourt fronting Wake Green Road, and canopy ("the shop expenses").

(c) Expenses relating to both the shops and the flats, including the Balcony (both under and over surfaces together with any upstands, etc) and the Mansion (including, but not exclusively, the grassed areas, garages, drive to the front of the garages, and drying areas), ("the joint expenses").

(2) Each shop will pay  $\frac{1}{4}$  of the shop expenses, and  $\frac{1}{4}$  of 30% of the joint expenses.

(3) Each flat will pay  $\frac{1}{12}$  of the flat expenses, and  $\frac{1}{12}$  of 70% of the joint expenses.

Dated 14 January 2016