



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

- Case Reference** : CHI/21UD/LVM/2020/0003
- Property** : Marina Heights, 63 West Hill Road
St Leonards-on-Sea, East Sussex
TN38 0NF
- Applicants** : Mr Kevin Hayes
- Representative** :
- Respondent** : Mr Gary Pickard (Manager) (1)
Ms Rita Akorita (2)
Mr Philip Burkin (3)
Mr Richard Cooper and Mrs Jean Cooper (4)
Marina Heights (St Leonards) Limited (5)
- Representative** : Ms Seal (Counsel) (2)
Ms Akorita (3)
Mrs Cooper (4)
- Type of Application** : Appointment of a manager Section 24
Landlord and Tenant Act 1987
- Tribunal
Member(s)** : Judge J Dobson
Mr W Gater FRICS MCI Arb
Mr N Robinson FRICS
- Date of Hearing** : 13th and 14th October 2020
- Date of Order** : 5th January 2021

DECISION

Summary of the Decision of the Tribunal

- 1. The application is granted to the extent that the Management Order dated 21st August 2017 is extended until 31st December 2023 on the terms of the Varied Management Order that accompanies this Decision.**

Background and the history of the application

2. The Tribunal received an application by the Applicant for the variation of a management order, by extension of it for a further five years. In the alternative, the application asked that the manager remain in place to ensure the completion of such works as found by the Tribunal to be appropriate and necessary following a hearing on 14th July 2020. The application was made under section 24(9) of the Landlord and Tenant Act 1987 (“the 1987 Act”).
3. Marina Heights, 63 West Hill Road, St Leonards (“the Property”) is a four-storey block of seven residential flats constructed in or about the late 1980s. Five of those are owned by Ms Akorita alone or jointly with Mr Burkin, the two are husband and wife. One flat is owned by each of the Applicant and Mr and Mrs Cooper. None of the flats are owner-occupied, save to the extent that Ms Akorita and Mr Burkin use one as a holiday home. The other six are tenanted.
4. The freehold title is held by Marina Heights (St Leonards) Limited (“the Freeholder”) and is registered with title number HT4222. There are three shareholders in the Freeholder- Ms Akorita and Mr Burkin, owning 5/6 of the shares between them, and Mr Hayes, owner of the other 1/6: there is one director- Ms Akorita. There was no sample lease provided with the application made but it was not in dispute that the Freeholder has the usual responsibilities. No reference was made by any party to any specific provisions.
5. The Tribunal appointed Mr Gary Pickard as manager (“the Manager”) of the Property, for a term of three years on 21st August 2017 (“the Management Order” or “the Order”). The reasons that it was found appropriate to make a Management Order are described in paragraphs 27 to 29 inclusive of Decision and Order dated 21st August 2017, “the 2017 Decision and Order”. Those read as follows:

“27 The Tribunal finds that there has been and remains a breach of duty under the lease in that the First and Third Respondent [Marina Heights (St Leonards) Limited and 63 West Hill Road RTM Company Limited respectively] have jointly and severally failed to provide certified

accounts in accordance with Clause 4.21 of the lease. This provides grounds for appointment under s24(2)(a)(i).

- 28 The Tribunal finds that there are grounds for appointment under s24(2)(ac)(i) in that there exist numerous breaches of the RICS Code and in particular the handling of client money and accounting which the Tribunal regards as serious and pervasive of Ms Akorita's management style.
- 29 The Tribunal finds that there are grounds for appointment under s24(b)(other circumstances) in that there appears to be a major conflict of interest between Ms Akorita's dual roles as Director and as leaseholder which potentially prevent her from exercising an independent judgement in a managerial role. The Tribunal is also concerned by her actions in suing or attempting to sue the freehold company for a spurious debt and her lack of professional expertise in overseeing major works at the property. Her attitude to fire safety issues was also of concern in relation to the obstructions in the lower hallway which the Tribunal observed during inspection of the property.
6. The Tribunal recorded from paragraphs 14 onward various matters which it is apparent led it to make those findings. The Tribunal found that a basis for such an order pursuant to section 24(2) of the 1987 Act was made out and that it was just and convenient for the order to be made.
 7. There have been several applications and appeals in respect of the Management Order, including an appeal of the Decision and Order that was unsuccessful before the Upper Tribunal. There was additionally an application to discharge the Management Order by certain of the Respondents dealt with by this Tribunal in 2018 in a decision dated 10th December 2018 ("the December 2018 Decision and Directions"), an order for costs to be paid by certain of the Respondents and an appeal of that which was also unsuccessful before the Upper Tribunal. There was additionally an application for judicial review of an Upper Tribunal decision.
 8. There has also, earlier this year, been an application by the Manager for a determination by the Tribunal of the reasonable level of service charges in respect of proposed major works. It is that matter which was the subject of the hearing 14th July 2020 referred to in the application. A Decision in respect of that was issued in September 2020 and re-issued as corrected in October 2020.
 9. Directions were issued in this application on 16th June 2020, which recited various details of the application and evidence provided and which set out the steps to be taken ahead of a final hearing, which was to be conducted as video proceedings. The Directions noted that the matters in respect of the appointment of the Manager had been extensively ventilated previously and that the Tribunal would not re-visit any such matters.

10. As the Management Order would have ended on 21st August 2020, the Order was extended within the Directions on an interim basis until the conclusion of this application.
11. The lessees named as Respondents and the Freeholder (“the Active Respondents”) (that is to say all of the Respondents save for the Manager) opposed the variation of the Management Order and instead sought the ending of the Order with the effect that management would return to the Freeholder.

The Law

12. The relevant provisions in respect of this application are found in paragraph 24(9) and (9A) of the 1987 Act.
13. The provisions read as follows:

24 (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 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.]

The Hearing and preliminary issues

14. The hearing was conducted as video proceedings as intended and across two days, concluding during the afternoon on the second day. The Applicant represented himself. Ms Akorita was represented by Ms Philippa Seal of Counsel. Mr Burkin was represented by Ms Akorita. Mr and Mrs Cooper were represented by Mrs Cooper.
15. Oral evidence was received from the Applicant Mr Hayes, Mr Pickard the Manager, Mr Scott Baker and Ms Akorita, plus and to a much lesser extent, Mr Burkin and Mrs Cooper. The Tribunal also had the advantage of written statements and statements of case and of oral submissions made in closing. Skeleton Arguments were additionally provided for the hearing by Ms Seal on behalf of Ms Akorita, 8 pages long, and by Ms Akorita on behalf of Mr Burkin, 10 pages long.

16. The first of several preliminary points was taken in the Skeleton Argument by Ms Seal that the original application was not signed, at least not as received by the Respondents. Second, the Applicant's witness statement, as she described it, was not verified by a statement of truth as required by earlier Directions. The Tribunal was invited by Ms Seal to dismiss the application in its entirety. The Tribunal did not consider it appropriate to do so.
17. Taking the application itself first, the bundle includes a signed page and Mr Hayes stated that a signed page was sent at the outset electronically, being a page that he printed, signed and scanned. The Tribunal accepts that and considers the likelihood is that was received as a separate electronic document by the Tribunal, which is acceptable. It was unclear whether that was served on the other parties by the Tribunal. Even where applications are not signed, sensible consideration must be given to the effects of the Covid 19 pandemic and the change to electronic applications. The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 ("the Rules"), including the over-riding objective of the Rules, give the Tribunal wide discretion in relation to case management to facilitate the Tribunal dealing with cases fairly and justly. If the Tribunal had not found that a signed page was filed and so it had been relevant, the Tribunal would have exercised that.
18. A slightly different preliminary point was made in the Skeleton Argument for Mr Burkin that the Applicant had provided a statement of case rather than a witness statement. It was stated that in a previous application, the Applicant had been prevented from giving evidence for that reason.
19. The document in question was headed "Statement of Truth of Kevin Patrick Hayes", signed by him and dated. Insofar as relevant, the Tribunal does not consider that if the document were regarded as a statement of case rather than a witness statement, that would of its nature preclude the Applicant giving evidence. However, the Tribunal also considers that the document is properly a witness statement and so will refer to it, as and where relevant, as "the Applicant's Witness Statement".
20. As to whether there is a sufficient statement of truth is arguable but the Tribunal considers that the heading is clear and notes there is a signature at the end. It is adequately clear the Applicant's intention was to state that the contents of the Statement were true, albeit that the wording which the Tribunal sets out in directions and guidance for a statement of truth was lacking. The Tribunal therefore finds the Applicant to have sufficiently confirmed the contents of the statement to be true. The Applicant was further able to confirm the contents of his statement to be true when giving oral evidence.
21. The final preliminary point made in the Skeleton Argument on behalf of Mr Burkin was that the application is said to be defective for failing to specify that the application to vary is made pursuant to section 24(9), referring to a finding that an application by Ms Akorita to vary the Management Order to appoint a different manager was defective for failing

to particularise actionable failings of the Manager. However, that was a different type of application to the current one. Ms Akorita sought to have the Manager removed and so needed to argue and demonstrate failings of the Manager which merited such a course: the Applicant seeks the Management Order to continue where the Manager has been found suitable. The Tribunal does not consider that the application must fail and be dismissed for the reason advanced and rather can and should be determined on its merits.

22. The Tribunal raised the point that a witness statement was served purportedly by the Freeholder, but not said to be made by Ms Akorita or any other live person able to give evidence and not signed in any legible name. The Tribunal stated that the document was not apparently a statement of anyone and as such it would not be considered. As any matters of substance reflect the Respondent's other documents, it is not necessary to say more about it. Neither do the exhibits, which predate the 2017 and 2018 Tribunal Decisions referred to above, require mention.
23. The last preliminary matter raised, not addressed in writing in advance but which arose at the start of the hearing and was well made, is that no witness statement had been provided by the Manager. Ms Seal submitted that the parties did not therefore know his position. The Manager observed that it was the Applicant's application and he considered that he simply needed to be available. However, he also said that he was happy to answer any questions. The Tribunal does not regard that as satisfactory and that instead a manager should provide a statement of matters of fact which he or she considers likely to assist the Tribunal and such that the other parties can consider that in advance of a final hearing.
24. After a short adjournment whilst instructions were taken, the parties agreed that they wished to ask questions of the Manager, save Mrs Cooper indicated that she probably had none, and wished to proceed with that. Accordingly, with the agreement of all of the parties, the Tribunal allowed oral evidence from the Manager despite the lack of a written witness statement from him. The oral evidence of the Manager is summarised below, together with that of the other witnesses.

Summary of the parties' written substantive cases

25. The Applicant advances three grounds for his application, as follows:
 - i) The situation regarding the freeholder has not changed and in the absence of an extension of the Management Order the management of the Property would revert to Freeholder, of which the sole director is still Ms Akorita and hence the situation that led to the Order shows no signs of improving;
 - ii) There has been no attempt to remedy the wrongs that lead to the Order; and
 - iii) The Manager needs to remain in place to ensure the completion of the major works, which have not yet commenced [and on which

no determination had been made at the time of the Applicant's application].

26. The Application expands on the second basis above, asserting that Ms Akorita has refused to appoint another director of the Freeholder and noting the previous determination that Ms Akorita would be able to make all decisions to suit her own interests. The Applicant argues that there is no foreseeable basis on which the situation is likely to change and so a five-year extension is sensible.
27. The application form is expanded on only to a very limited extent in the Applicant's Witness Statement. The document largely refers to previous decisions in applications between the parties and lists the documents exhibited, including an unnecessary second copy in the bundle of the original Management Order. There is no need at this point in this Decision to quote from or summarise those previous decisions.
28. The Skeleton Argument by Ms Seal identifies five bases on which Ms Akorita opposed the application, distilling Mr Akorita's assertions and evidence into those. The fourth basis, however, includes several different elements. The net effect was that it was submitted that the application should be dismissed.
29. The bases were expressed as:
 - a) The duration of a court [/Tribunal] appointed manager should be limited;
 - b) There has been a significant change in the circumstances that led to the appointment of the Manager, namely that Ms Akorita would not manage the Property but had already appointed a suitably qualified independent manager;
 - c) The previous findings against Ms Akorita are therefore no longer relevant;
 - d) There is a history of disagreement between the majority of the lessees and the Manager and for that reason it would not be appropriate to extend the term of the Order; and
 - e) The majority view must be taken into account.
30. Those grounds were each expanded upon in the Skeleton Argument and in closing submissions. As the matters are dealt with below, it is not necessary to also expand upon them here.
31. Ms Akorita served a witness statement dated 10th August 2020 which also sets out five grounds for opposing the application, expanded on in the witness statement under helpful sub-headings. Those did not explicitly include a) above. The statement adds arguments that ensuring the completion of major works not yet started does not require the Manager and included a separate item that some of the service charges demanded are not reasonable, which Ms Seal had included as part of d).

32. The statement comments on Ms Akorita's satisfaction with management of another property by Mr Scott Baker, the managing agent she proposed in place of the Manager. In relation to the level of service charges, it is said that some legal costs are being claimed twice and six other matters are queried but very little information is given. Ms Akorita also explains towards the end of her statement why she does not consider it appropriate to appoint Mr Hayes as a director of the freeholder- the reason given being breach of confidentiality. The final comments are that the Freeholder has a limited income-£700- and that because of its expenses- principally accountant fees of £420- there is a risk of insolvency and further that having a Manager makes it harder to sell or re-mortgage the flats.
33. Ms Akorita also comments over the course of the subsequent two pages as to why she disagrees with the findings of the Tribunal in the 2017 Decision and Order, adding another page in respect of matters related to her unsuccessful 2018 application to remove the Manager. However, the Tribunal re-iterates that it will not re-visit matters which were the subject of previous findings, albeit that some, limited, reference is made to those findings where appropriate.
34. A further page and a half (not consecutive) relates firstly to the Manager's application in respect of the reasonableness of service charges, in relation to which the Tribunal, with the same panel as this Decision, made findings contrary to Ms Akorita's comments in the witness statement. Secondly, it relates to the service charges which had been demanded on account, which the Tribunal found reasonable in light of the cost of major works found appropriate. The Tribunal appreciates that the statement predated the Tribunal's Decision.
35. The agreement entered into by Ms Akorita with Mr Baker and also certain emails together with various other documents which predate the 2017 Decision and Order or the December 2018 Decision and Directions are exhibited to the statement.
36. The Skeleton Argument on behalf of Mr Burkin, following on from the preliminary points made, addresses the grounds of the Applicant's application. It is submitted that the lack of appointment of the Applicant as a director of the Freeholder is not a basis for the continuation of the Management Order and it denies issues expressed by the Applicant with the management of the Freeholder. It is asserted that any delay with the major works was the fault of the Applicant or the Manager. It is submitted that the issues with money that led to the Management Order have not continued, whereas a Management Order is usually to enable the landlord to put its house in order.
37. The Skeleton Argument also makes several comments about the appointment of Scott Baker, including as to his capability and that he can deal with the required major works, stating that the Manager need not do and making criticisms of the Manager, together an assertion that his ongoing appointment will deepen rifts. The Tribunal has not sought to set out every matter argued in the 10 pages.

38. A witness statement was served from Mr Burkin, stating him to be the joint owner of 3 of the flats in the Property and agreeing with the contents of the witness statement of Ms Akorita.
39. The witness statement from Scott Baker comments on the experience of his company and compliance with the RICS Code of Practice, indicates awareness of the Property and Ms Akorita and refers to his understanding of the major works and the survey reports prepared. Mr Baker refers to management of other major works nearby and mentions the agreement entered into with Ms Akorita.
40. The written case of Mr and Mrs Cooper was set out in a short statement of both of them jointly, of 5 paragraphs. They say that by far the most efficient and proactive management of the Property has been that offered by Ms Akorita, that they deemed the application to have her replaced as unjustifiable and they had no choice but to accept the Management Order. They continue stating that the reasons for applying to vary the Order 2018 remained as relevant now and expressing dissatisfaction with how the 2018 application was dealt with.
41. Mr and Mrs Cooper state that they strongly oppose the variation application. The other comments support management by Mr Baker and follow points made by others of the Lessee Respondents.

Oral Evidence received

42. The oral evidence was given over the course of approximately 1 and 1/3 days. The hearing was recorded. It is neither practical or necessary to record all of the matters covered in evidence in this Decision. The oral evidence referred to below is limited to that which the Tribunal found most relevant.

Evidence of Mr Kevin Hayes- Applicant

43. The first oral evidence given was that of Mr Hayes, the Applicant, who was questioned at some length for most of the morning and into the afternoon session. After questioning about the Freeholder in which he holds a share, it was put to him that he had not sought to raise the approach to managing the Property within the Freeholder company prior to the expiry of the term of the Management Order. He accepted that he had not done or otherwise notified the Freeholder prior to applying. Mr Hayes noted Ms Akorita had not told him about appointing a managing agent when the Manager was in post. He did not accept the proposition that he sought one rule for him and one for others.
44. The main thrust of Mr Hayes' evidence was that he sought what he described a number of times as "continuous independent management" of the Property. He doubted a managing agent would remain more than a few months with Ms Akorita as sole director of the Freeholder and did not accept that the agent would be independent, having to act on instructions

received and where the agent knew his tenure relied on Ms Akorita. His concern was not the experience of that agent, he said in response to the assertion of Mr Baker having ample experience, but that the agent was reliant on Ms Akorita to stay in position. He accepted that Mr Baker's fees were somewhat lower than those of the Manager.

45. In response to it being put to him that Ms Akorita did not intend to manage, he suggested that may be the case now but she could change her mind and dismiss the agent, for example if she didn't like the agent's approach, which he said is where lies the problem. Mr Hayes did not consider the situation would be much different to that before the Order and it would only be a Tribunal- appointed manager who would be independent and continuous. He expressed no desire to return to the position he had come from and said he had no appetite for a need to apply back to the Tribunal. Mr Hayes said he did not feel Ms Akorita's perspective on litigation was the same.
46. Mr Hayes also said in evidence that the arrangement of the major works was just one aspect but felt the Manager was best placed to continue dealing with those and without further delay. Mr Hayes stated that he had a reasonable relationship with the Manager. He considered that the litigation and appeals since the Management Order had caused delay, not "totally" agreeing that the dispute about replacing or patch repairing the roof and the consultation process had been the cause of delay and commenting he was not sure that service charges had been paid.
47. It was put to Mr Hayes that it was hardly fair that his 1/7 interest as a lessee should prevail over the other 6/7, to which he responded that was beside the point. It was also put that Ms Akorita had remedied the issue prior to the Management Order of mixing money and not maintaining separate accounts, which Mr Hayes considered she had only done in order to hand over the accounts as required to and that she could not thereafter have mixed money as she was not managing the service charges. Mr Hayes also commented on the financial position of the Freeholder, suggesting £420 paid to an accountant was a lot for £700 of turnover. He did not agree that the reasons given by him for continuing the appointment of the Manager did not actually apply and firmly rejected Ms Seal's suggestion to him that the circumstances were now entirely different to those before the making of the Order.
48. In response to questions from Ms Akorita, the additional evidence of Mr Hayes was quite limited, much of the questioning revisiting points as to Mr Baker's competence and lack of independence from Ms Akorita. Mr Hayes suggested a question about water flowing onto the land from next door was a matter for the Manager. In response to the suggestion that the Tribunal had previously found the matter went beyond the Manager's remit, Mr Hayes did not accept that Mr Baker would necessarily be more effective at dealing with the issue, although he equally thought it would be reasonably easy to resolve the issue and queried why Ms Akorita had not asked the neighbours about the matter. The questioning then ventured firmly into territory dealt with in 2018 and continued into matters before the

Management Order. Whilst some latitude was allowed by the Tribunal in case that questioning may return to relevant matters, in the event it did not.

49. Mrs Cooper queried whether the opinion of others mattered to Mr Hayes. He expressed sympathy for her and her husband but re-iterated his concern as to Ms Akorita's track record and a return to management by her. He accepted Mrs Cooper's point that there had been no consultation before this application was submitted but had offered mediation before the Management Order, which Ms Akorita would not, he said, entertain.

Evidence of Mr Gary Pickard- Manager

50. The second witness heard from was the Manager, Mr Pickard, firstly in rather shorter cross-examination from Ms Seal. Mr Pickard did not accept that circumstances had changed, save for the Management Order. He agreed that there was nothing to suggest that Mr Baker was not capable. Mr Pickard said in response to an invitation to accept that he had poor relations with Ms Akorita, that she had provided stiff opposition in the management of the Property, although he expressed happiness with working with Ms Akorita, saying that he was always entirely neutral. Mr Pickard also accepted that the majority of lessees were not happy with him. He agreed that Ms Akorita had recently queried some service charges, saying he had not answered those yet but he suggested there was no dispute as such because Ms Akorita had not yet seen the answers.
51. In relation to additional matters which were the subject of questioning by Ms Akorita on the first day, those essentially related to suggested failings with management of the Property. There was also questioning about not referring to a retention in the contract for major works to be carried out, which Mr Pickard noted was in the specification of works distributed; about efforts to resolve water getting onto the Property from a neighbouring one, in relation to which Mr Pickard said that he had spoken to the neighbours but had no legal right to enforce; about the failure to install CCTV, which Mr Pickard said reflected legal costs in the previous litigation and lack of funds; and as to a lack of routine maintenance, to which Mr Pickard replied that the works required were part of the major works. Other matters pre-dated the 2018 Decision and Directions.
52. Ms Akorita wished to ask additional questions on the morning of the second day, which the Tribunal decided to allow in all the circumstances. Ms Akorita asked about legal fees incurred in 2019/ 2020, which Mr Pickard said he had requested clarification of from the solicitors. She also asked about 2020/ 2021 budgeted expenditure for management fees for the major works to which Mr Pickard explained those fees depended on actual expenditure which may differ.
53. Mr Pickard responded to the very limited questions from others that there are just over £44,000 of service charges unpaid but that the Applicant was up to date with his.

Evidence of Mr Scott Baker

54. The final evidence on the first day was received from Mr Baker, taken out of turn but based on his lack of availability on the second day. He explained in response to questions from the parties that he had seen the Property and contractor quotes and he clarified his fees, including that there was no additional fee in respect of major works.
55. Mr Baker was asked a number of questions by Tribunal members Mr Gater and Mr Robinson. Mr Baker was not that clear as to the difference between a managing agent and a Tribunal- appointed manager, although he identified that an agent was instructed by the client and the Manager was not. He said he would be happy to be a Tribunal- appointed manager. Mr Baker was asked about how he dealt with disagreements with clients and gave an example, also stating that he understood the RICS Code insofar as it related to impartiality and conflicts.

Evidence of Ms Rita Akorita

56. The second day continued after the additional questions to Mr Pickard with the evidence of Ms Akorita. Mr Hayes put to her that the other then lessees had not been dissatisfied with Bridgfords or the previous managing agents and that rather Ms Akorita wished to manage herself, suggesting there to be a recurring theme. Ms Akorita denied that and said the agents had taken too long over section 20 procedure and generally, asserting she had done a better job. She did not accept that she could terminate the appointment of a managing agent and re-iterated that she no interest in managing the Property. Ms Akorita accepted not having consulted in the appointment of Mr Baker, saying nothing in the Lease required it.
57. Mr Hayes also put to Ms Akorita that she opposed the Manager continuing because she did not accept the previous findings of the Tribunal, which Ms Akorita did not agree with, also stating that in various circumstances she had acted fairly and evenly. He further asked why the Freeholder could become insolvent, to which Ms Akorita responded that it would be if there was a need to pay both Mr Baker and Mr Pickard. Mr Hayes queried that, to which Ms Akorita asserted that both would have to be paid from the service charges or otherwise the Freeholder would have to find the money for one of them. She did not accept Mr Hayes' assertion that she had been reckless in contracting with Mr Baker, saying that if the Manager appointment was to end, someone needed to take over and that Mr Baker had been appointed in anticipation. Mr Hayes also asserted recklessness in respect of the litigation brought in respect of the appointment of the Manager which had produced costs for the Freeholder to pay, which arose out of Ms Akorita's evidence that she had given a director's loan of £4367.20 to the Freeholder in relation to that and which the Freeholder could not repay. Mr Robinson also noted that litigation could put the Freeholder in a position that it could not trade, Ms Akorita accepting it created a risk, and queried how the Freeholder could pay off the loan on £700 income. In answer, Ms Akorita said she would not claim more.

However, she also said in response to a question by Judge Dobson that £1300 was deemed a loan and would appear in the company accounts.

58. Ms Akorita said that she had paid service charges but accepted that she had not paid them in respect of the major works. She denied any conflict would arise if her agent managed the Property and needed her payment to service charges. Mr Gater, asked how work could be undertaken without the service charge funds, to which Ms Akorita stated that she would be appealing the finding of the Tribunal about the quote for major works. She said in response to a question by Judge Dobson about her not paying that she thought some amounts were too high. Ms Akorita was unsure as to the payments she had made. Ms Akorita accepted after further questioning by Mr Gater that it was for the Manager to decide the amounts reasonable by way of service charges and not her, subject to her making an application to the Tribunal.
59. Mr Gater also queried why, if Ms Akorita wanted no involvement in management of the Property, she had not suggested Mr Baker as a Tribunal- appointed manager. Ms Akorita replied that she had asked if Mr Baker had experience of such appointments but he had not: she argued for dismissal of the Order and for Mr Baker managing under the Freeholder.
60. Mrs Cooper had no questions of Ms Akorita. There is nothing requiring noting of the very limited re-examination by Ms Seal.

Evidence of Mr Burkin and Mrs Cooper

61. Mr Burkin added nothing requiring noting and indeed was only asked 3 questions all told.
62. Mrs Cooper was the last witness to give evidence. Mrs Cooper accepted in response to questions from the Applicant that she was probably first aware of appointment of Mr Baker in the bundle for the July 2020 hearing. She said that she did not have a good relationship with the Manager. She also stated that she had paid service charges except for the major works and had written saying what she had done. Mrs Cooper expressed no concern about Mr Baker being answerable to Ms Akorita, saying that she had total trust in Ms Akorita. Mrs Cooper was otherwise supportive of Mr Baker.

Closing submissions

63. The first submissions heard in this instance were from the Applicant. His argument was essentially that history did not support Ms Akorita not wishing to manage the Property, but rather that she would not accept an independent manager, the Manager's appointment having been followed by appeals and litigation. He said the spectre had been raised again of the Freeholder company being in litigation and that it was not the first time that a debt had been put on the company by Ms Akorita. He said there would be a conflict of interest, that there seemed some confusion about service charges for both Mr Pickard and Mr Baker and submitted there was no guarantee of major works being carried out by Mr Baker. He concluded

with his essential theme of seeking continuous, professional and independent management.

64. Ms Seal followed the structure of her Skeleton Argument (which is therefore not separately summarised), starting with the duration of the Management Order. She asserted such an order to be draconian, that the whole purpose is that the end of the, short, term the circumstances should be thoroughly reviewed and that if those have changed, the order should not continue. Ms Seal asserted that issues at the time of the Management Order had been addressed. Ms Seal continued by submitting that there had been a significant shift and that what had changed enormously since the Management Order was the ability to engage a managing agent- Mr Baker had been appointed- and hence the conflict identified in 2017 would not arise. She added that the knowledge that if Mr Baker's management was to be terminated (in the future), the Applicant would apply for another Manager. Ms Seal observed that Ms Akorita had stated numerous times that she did not wish to manage the Property and submitted that there was nothing to say Mr Baker would not fulfil a requirement to be independent. He had been appointed when Ms Akorita was unaware of this application and there had been no suggestion that he was unsuitable. Ms Seal advanced three further reasons why Mr Baker was more suitable than the Manager- he is more locally based, his fees are lower- including not charging more for dealing with major works- and he has majority support.
65. Ms Seal noted the concern that the major works may not be undertaken if the Management Order ended. She submitted they would, although Ms Akorita queried the figures, and there was no obvious reason why they could not start in the near future, with Mr Baker being at no disadvantage as compared to the Manager as work had not commenced, once in funds. Interests were, Ms Seal submitted, aligned in ensuring works undertaken and to a decent standard. Ms Seal then moved on to what she submitted to be considerable disagreement between the Manager and the majority of lessees, referring to the list in Ms Akorita's statement and including Ms Akorita's recent enquiries and lack of response, and to real discontent which an extension would perpetuate. Ms Seal argued that the majority view must be taken account of.
66. Having advanced Ms Akorita's arguments, Ms Seal commented on the Applicant's grounds, essentially repeating previous points. She asserted fairness meant Ms Akorita should be given a second chance and that the Applicant concern was simply he did not believe Ms Akorita. Ms Seal submitted that liquidation of the Freeholder was a risk whether the Manager continued or not and that the number of appeals and similar did not hinder the Manager in managing the Property. The Manager had, she said, had three years and it was now time that Ms Akorita was given the opportunity.
67. Ms Akorita closing for Mr Burkin, firstly argued forcefully that the application had to be made in reliance on section 24(9) of the Act. She asserted that the appointment of Mr Baker had remedied any concern; that the Freeholder had not delayed the major works, not being a service charge

payer for which the consultation process needed to be followed; and that the Applicant's other points were mainly company law matters. Ms Akorita repeated that she did not wish to manage the Property.

68. Ms Akorita asserted that the appointment of a manager should improve a situation but submitted it had not, rather being stressful. She questioned the Manager's impartiality- although the Tribunal notes had not raised that with the Manager in cross-examination. The same point applies to an assertion that in respect to repairs to the front door lock, the Manager had shown a cavalier attitude. Ms Akorita repeated the assertion that relations had broken down. She made a plea for a clean slate and that the appointment of Mr Baker by the freeholder be given a chance.
69. Mrs Cooper only additional point was in relation to asserted poor management, saying that her son and his family live in the Property and so she had a good insight.

Consideration and findings of fact

70. The Tribunal is mindful of the previous litigation and challenges. The Tribunal accordingly deals with matters in some detail and somewhat more detail than might otherwise be the case. The Tribunal trusts that in doing so, it will make its reasoning abundantly clear.
71. The Tribunal considers the arguments advanced by Mr Hayes and counter-arguments of the Lessee Respondents in respect of those, then turning to the additional arguments of the Lessee Respondents. The Tribunal takes each of those arguments in turn.
- i) That the situation regarding the freeholder has not changed and in the absence of an extension of the Management Order the management of the Property would revert to Freeholder, of which the sole director is still Ms Akorita and hence the situation that led to the Order shows no signs of improving
72. The Tribunal considers that this is the Applicant's key argument.
73. In respect of the specific reference to Ms Akorita being the sole director of the Freeholder and any implication that there ought to be other directors and that has relevance, the Tribunal does record that it does not find the perspective of Mr Hayes as to involvement by him in the running of the Freeholder company to have been entirely helpful. The Tribunal considers that Mr Hayes has an unrealistic view of the rights held by him pursuant to his 1/6 share of the shares of the freeholder. It was apparent that he considers that he ought to a director of the freeholder company but not with good cause. That may have contributed to greater hostility with Ms Akorita than necessary. Whilst Mr Hayes referred on a number of occasions to his owning a share of the freehold of the Property and suggested that he ought to have rights accordingly, he does not own such a share. The freehold is owned by the company in which he is a minority shareholder. Mr Hayes has the rights, albeit limited, of such a shareholder.

74. It is submitted on behalf of Mr Burkin, that the lack of appointment of the Applicant as a director of the Freeholder is not a basis for the continuation of the Management Order. The Tribunal has no difficulty agreeing that the lack of appointment of Mr Hayes as a director of the Freeholder is not in itself a proper ground for the variation of the Management Order.
75. However, it is the question of the likely approach of the Freeholder, which lies at the heart of this case. In practice that means the approach of Ms Akorita. Whilst the issue is not the lack of a second director as such, plainly where there is one director, that director controls the approach taken by the company. The Applicant's wider point is that, quite plainly, management would revert to the Freeholder and about his concern with the management of the Property in that situation. As the Applicant made clear, his concern is that problems would arise with such management.
76. The cases of the Active Respondents appear to fully understand those concerns. Ms Seal advanced two principal arguments in response, namely:
- c) “There has been a significant change in the circumstances that led to the appointment of [the Manager]: [Ms Akorita] will not manage the Property when the Management Order expires and has already been appointed a suitably qualified independent manager”
- and
- d) “Therefore, the previous findings made against [Ms Akorita] are longer relevant”
77. The Tribunal does not consider that there is weight in these arguments. Certainly, the Tribunal does not find that there has been a significant change in circumstances since the Order to give such weight for it not to be just and convenient to extend the term of the Order. The argument that previous findings are no longer relevant because of that asserted significant change falls with the finding that there not been such a change and as otherwise explained below.
78. Ms Akorita has sought the end of the Management Order so that she can appoint new managing agents on behalf of the freeholder. It is said on her behalf that she would appoint a manager but that is not correct in the sense that a Tribunal Manager is such. Anyone appointed by the Freeholder in principle, in effect by Ms Akorita as its director, would be an agent, no more and no less.
79. The reality is that such agents would be contracted to and beholden to the Freeholder and so, in practice, to Ms Akorita (as the Director) and where Ms Akorita and her husband, Mr Burkin, own the majority of the shares, such that the scope for control by the other shareholder, the Applicant, of the approach taken by the Freeholder is extremely limited. It is abundantly clear that Ms Akorita is the driving force of that company and that is does her bidding. Given concerns about Ms Akorita's involvement in management of the Property previously expressed by the Tribunal in 2017 and or otherwise noted in the 2017 Decision and Order, the Tribunal

cannot be satisfied that agents beholden to Ms Akorita could manage the Property acceptably.

80. The assertion that the agents are somehow independent is without merit. The agents will be paid by the Freeholder and will necessarily take instructions from the Freeholder and follow those instructions. They will almost certainly be contractually unable to do otherwise. The Freeholder company could terminate the instruction as and when it chose to. The Freeholder could limit the steps that its managing agent could undertake by way of instructions given or other limits being placed explicitly or practically. Mr Baker as a managing agent would be far removed from the position of a Tribunal- appointed manager. The Tribunal finds that agents would not be independent of the Freeholder.
81. The Tribunal finds that the current proposal by Ms Akorita that managing agents be appointed does not amount to a significant change in circumstances from those prior to the Management Order. As an aside, the Tribunal notes that managing agents were instructed previously- Bridgeford and Co most recently and another prior to that. As Ms Akorita's case accepts, she terminated their instruction, being dissatisfied with their management of the Property, specifically noted in the 2017 Decision and Order to relate to major works, such that 63 West Hill Road RTM took over management from June 2013 until the Management Order. Ms Akorita was also the sole director of that company.
82. The Tribunal finds from the cases presented and the previous findings in the Management Order, that the high likelihood is that any agents would remain as agents for as long as they managed the Property in the manner wished by Ms Akorita and not beyond that. Ms Akorita's dealings with the litigation in respect of this Property indicates satisfaction only as far as matters proceed in the manner that she wishes and that anything which does not will be challenged until the time that such challenge becomes impossible.
83. The Tribunal accordingly finds that the appointment of managing agents to manage the Property is not a sufficient substitute for the continuation of the Management Order in this instance. The Tribunal has no confidence that such agents would in fact be able to take the appropriate steps to manage the Property and without influence or interference in the manner that the Manager can. Whilst it is said that any conflict would not be relevant because of the proposed managing agent, it is apparent that the managing agent would provide no solution for the reasons explained above.
84. Even ignoring the considerable force of all of the above more general points, one of the most obvious difficulties for anyone managing the Property remains the fact that Ms Akorita and her husband, Mr Burkin, own the majority of the flats in the Property and so are liable of the majority of the service charges. In the absence of payment by them, the Property cannot practically be managed.

85. That would be less of a concern if Ms Akorita (and Mr Burkin) were up to date with payment of service charges and there was evidence that they would continue to make payments as reasonably demanded. Ms Akorita's approach to payment in particular- and her effective prevention at the present time of the undertaking of major works that are needed by her lack of payment- gives no confidence that she fully accepts the need to undertake major works to the Property and that she will facilitate that. Ms Akorita has failed to pay the service charges demanded during 2019 and 2020 in respect of major works, where there was never a dispute about the need in principle for at least works to be undertaken. Ms Akorita did not apply to the Tribunal as to the reasonableness of the service charges but simply decided not to pay them because she did not agree with them. The Tribunal has found the reasonable charges to exceed the amounts demanded on account by the Manager. Even that has not prompted the payment of the service charges, or any payment at all towards them.
86. The Tribunal finds that Ms Akorita has deliberately failed to make any payment in respect of major works, including since the Decision of the Tribunal with regard to reasonable service charges, and in the knowledge that her lack of payment prevents the Tribunal-appointed Manager being able to take the steps required in respect of such repairs. The Tribunal records the specific evidence given on behalf of Ms Akorita that payment has not been made of service charges demanded this year and last to pay for the major works. The same can be said in respect of the other Active Respondents Mr and Mrs Cooper and Mr Burkin.
87. The Tribunal finds that the service charge payments for the cost of the major works need to be made and without delay, echoing its findings its Decision earlier this year. As matters stand, further steps need to be taken to recover those sums. The Tribunal finds that a managing agent, instructed by the Freeholder which is itself controlled by Ms Akorita the largest non-payer, will be unable to take the potentially necessary steps to ensure that the service charges are recovered.
88. The Tribunal accepts that it is highly unlikely that Ms Akorita would instruct agents to pursue herself and that she could not in any event properly, as controller of the Freeholder, conduct litigation against herself as a lessee. The agents would be hamstrung, unable to attend to works due to lack of funds and unable to pursue such funds: the sort of conflict identified by and which so much troubled the Tribunal in 2017, would quite plainly, the Tribunal finds, arise.
89. The Tribunal rejects suggestions that delay with the major works is primarily the fault of the Manager and the Applicant, rejects the argument that the several instances of litigation since the Management Order have not impacted on management- in relation to which the Tribunal finds both the time spent and the cost to be very relevant and that on the evidence heard that has impacted on management. The Tribunal finds that the approach taken by Ms Akorita to have been frustrating the management of the Property. That approach is disappointingly entirely consistent with

only doing that which she wishes to and in refusing to accept anything other.

90. Despite the Management Order made in 2017 and the unsuccessful appeal of that and despite the 2018 Decision and Directions, it is apparent from the case presented that Ms Akorita still does not accept the findings made and the significant failings in management found. Some 3 pages of her witness statement were spent disagreeing with findings made and upheld on appeal. Mr and Mrs Cooper still suggest that the Management Order should not have been made and praise Ms Akorita's management, a position which is wholly unsustainable. The cases presented on behalf of Ms Akorita and Mr Burkin sought to revisit matters prior to the 2018 Decision and Directions despite findings having been previously made by the Tribunal and the contents of the Directions in this application.
91. The Tribunal also found that to inspire no confidence that Ms Akorita would, in the event that the Applicant's application was to be refused, manage the Property in an acceptable manner. Rather the matters demonstrate a lack of change, particularly a lack of progress, from the circumstances of the Management Order. The previous findings made by the Tribunal at the time of the Management Order and in the 2018 Decision and Directions are accordingly found by the Tribunal to be still relevant. The criticisms of Ms Akorita found borne out in the 2017 Decision and Order were substantial and conflict of interest was plainly a considerable concern to the Tribunal at that time. The 2017 Decision and Order records that is not the first time on which such a conflict of interest had troubled the Tribunal, reference is also made to a failed application by Ms Akorita to be appointed as manager by the Tribunal and the rejection of that in part on the grounds of conflict of interest. The Tribunal finds that the concerns held previously still hold good.
92. Whilst it was, quite correctly, observed on behalf of Mr Burkin that the issues with money that led to the Management Order have not continued, that takes the Active Respondents nowhere. The Freeholder has been precluded from dealing with service charge money and similar precisely because of the Management Order. The more notable point is that there is no clear acceptance of failings in respect of previous dealings with such money, where Ms Akorita prepared the argument for her partner.
93. In contrast, the independence of the Manager from the influence of Ms Akorita and the fact that the Manager manages in the interests of all of the lessees and answerable to the Tribunal is a very powerful reason for the Management Order continuing for a further period.
94. For the avoidance of doubt, none of the above should be taken as a criticism of Mr Baker. Equally, none of the matters said by Mr Baker in his written evidence or his oral evidence in any way allay the Tribunal's concerns. The Tribunal accepts that Mr Baker may refuse to act in a manner he does not consider appropriate. However, the Tribunal has no confidence that his appointment would survive it.

95. The Tribunal briefly observes in response to the assertion that if the agent's appointment were terminated by the Freeholder, a further application could be made for the further appointment of a Manager, that such goes without saying but is not a good point. The Tribunal agrees with Mr Hayes that the ability to apply back to the Tribunal with the time, stress and potential cost involved is not sufficient. In the event that the prospect of any issues arising with Ms Akorita managing the Property on behalf of the Freeholder through an agent were slim, the point that a further application to the Tribunal could be made might start to have some merit (although even so it is very unlikely that would be enough merit).
96. In clear contrast, where the history and the approach to this application suggests the prospects of issues arising if the Freeholder's agent managed the Property to be so high, the ability to again stop the effects of any problems at the conclusion of the further management order application, is not a reason to return to the state of affairs prior to the Management Order and to hope all manages to be well. Certainly not at this time.
97. The Tribunal makes one final but significant observation about the managing agent. That observation is that Ms Akorita has apparently already retained that agent. Whilst there is some logic to seeking to ensure that an arrangement can be in place in the event that the Management Order ceases, an orderly handover could have attended to without the need to go beyond exploring potential arrangement.
98. The most relevant point is that the Tribunal finds that the appointment of agents is a step taken to exercise a management function in respect of the Property. That is precluded by the Management Order. Ms Akorita has failed to act in accordance with Order. That can only, and does, increase concern.
99. That concern is exacerbated by the appointment of agents making the Freeholder contractually liable for further fees. The fees cannot, the Tribunal finds, be recovered by way of service charges where the Tribunal has determined that the Management Order should be varied and extended. They are not fees that the Freeholder was entitled to incur, the Freeholder having not been entitled to appoint the agents, and they are not payable through service charges. Any theoretical reasonableness of the amount of such charges is irrelevant.
100. The fact that the Freeholder has, on Ms Akorita's direction and in breach of the Management Order, incurred such fees ahead of knowledge that the fees are, at least in principal, recoverable and has created a liability for the Freeholder which it will have to meet under its own funds, demonstrates a lack of financial responsibility and lack of expectation of proper management if management of the Property were returned to the Freeholder. The previous findings in the 2017 Decision and Order as to financial management are of obvious relevance.
101. The effect of all the above is that the Tribunal considers that there is substantial force in the Applicant's ground for the variation of the

Management Order and a distinct lack of force in the contrary arguments advanced for the Active Respondents.

ii) There has been no attempt to remedy the wrongs that lead to the Order

102. The Applicant's case in respect of this ground argued on the application form was not clearly expressed. It is unclear even now what matters the Applicant had in mind.

103. In terms of the breaches found in 2017 in respect of accounts and otherwise the handling of client money, the Respondent's case, as principally expressed by and on behalf of Ms Akorita is that any issues were resolved in order that the relevant funds could be handed over to the Manager. The Manager has not suggested otherwise and the Applicant put no case otherwise to Ms Akorita. The funds have not been in the control of Ms Akorita since the funds were transferred to the Manager and therefore it not apparent what Ms Akorita might effectively now do. This is something of the reverse argument by the Applicant to that advanced on behalf of Mr Burkin and considered in the previous page of this Decision.

104. To the extent that the Tribunal in 2017 found other breaches, was concerned about her litigation with the Freeholder and found there to be a conflict of interest, it is equally unclear what the Applicant considers amounts to a matter not remedied and what the Applicant considers should be done. Ms Akorita has not been entitled to take any steps in respect of management of the Property since August 2017.

105. If the Applicant sought as part of this ground to refer to Ms Akorita's sole directorship of the Freeholder, that more specifically forms part of the first ground, already addressed. The Tribunal does not find other ongoing breach to have been demonstrated, although the appointment of the agent is on similar lines to the financial concerns found by the Tribunal.

iii) The major works have not been able to commence and the Manager is required to remain in place to ensure the completion of the major works

106. The Tribunal has to a large extent considered this ground along with the others above. The Tribunal finds significant merit to it, not because of any concern found as to the capability of Mr Baker to deal with major works in principle but because of his inevitable lack of independence and the issues that may arise in relation to the costs of works and the required funds. The Tribunal makes certain further observations, additional to those above and not seeking to detract from them.

107. The Tribunal considers that delay with the undertaking of the works has had a number of causes, the Tribunal members having heard the Manager's application about service charges relatively recently and so being well aware of the major works. The Tribunal found in its Decision in respect of that application, that the Manager's approach had been

reasonable overall. That is not to say entirely fault-free but far from such as to weigh against extending the period of the Management Order.

108. It is particularly relevant that the major works, such as found by the Tribunal to be reasonable and in some instances urgent, can only be undertaken once the Manager has the funds to hand to meet the estimated costs. The Tribunal accepts the evidence of the Manager that there is approximately £44,000.00 of unpaid service charges and finds that those are service charges payable but unpaid by the Active Respondents and not the Applicant. In that regard, the Tribunal again notes the specific evidence given on behalf of the Lessee Respondents that they have not paid.
109. The Tribunal further finds on the evidence that Ms Akorita (and Mr Burkin) has not paid because Ms Akorita has not accepted the approach of the Manager and does not accept the findings of this Tribunal as to the consultation process and the quote accepted by the Manager for the major works found by the Tribunal to be appropriate pursuant to the Lease. That is spite of her acceptance when questioned that it not for her to decide the reasonable level of service charges. The Tribunal is not satisfied that Ms Akorita would authorise the agent to undertake the major works in the manner intended by the Manager and at cost producing service charges found by the Tribunal to be reasonable.
110. The Tribunal finds that there is every prospect that there will continue to be difficulty with ensuring payment by Ms Akorita, who is likely to remain dissatisfied irrespective of the findings of this Tribunal and the costs of the major works, and that there is every prospect that action will need to be taken to compel that payment. The Tribunal repeats that a managing agent instructed by the Freeholder which is controlled by Ms Akorita is unlikely to be instructed to take such action against Ms Akorita (or other Lessee Respondents) and is very likely to have its contract terminated if it attempts to take any such step or otherwise seek to achieve payment by Ms Akorita of sums that the Tribunal finds Ms Akorita does not wish to pay.
111. The Tribunal re-iterates the matters set out above about the lack of independence of Mr Baker as agent for Freeholder and potential conflict of interest between the Freeholder (and Ms Akorita as director and driver of it) and Ms Akorita in her position as lessee.
112. The Tribunal has no hesitation in finding that varying the Management Order is just and convenient in order to facilitate the Manager ensuring that the major works are able to be undertaken and are undertaken.

Other arguments advanced

113. Given that the Tribunal finds the first and third grounds advanced by the Applicant to have considerable merit and finds that the direct arguments of the Lessee Respondents against those are weak, the Tribunal considers the various other arguments advanced by one or other of the Lessee Respondents in the event any ought to alter the decision to be made.

b) There is a history of disagreement between the majority of the leaseholders and [the Manager] and it would not therefore be appropriate to extend [the Manager's] term

114. There is something of an irony in the circumstances that the fourth basis on which the application is opposed on behalf of Ms Akorita is a history of disagreement between the majority of the lessees and the Manager. The majority of the lessees, certainly in terms of number of flats in the Property that they own, are Ms Akorita and Mr Burkin. Mr and Mrs Cooper were supportive of Ms Akorita's position but their support should, the Tribunal finds, be treated with some caution where much of the content of their witness statement seeks to fly in the face of findings made previously by the Tribunal.
115. The history of disagreement is primarily a history of Ms Akorita challenging any decision, whether of a court or tribunal or other person or body, with which she has disagreed, drawing in the Manager. That follows on from several instances of litigation involving Ms Akorita prior to the Management Order and recorded as a further reason why the Tribunal had rejected the appointment of Ms Akorita as manager. Similarly, Ms Akorita does appear to have a poor relationship with the Manager but the Tribunal considers that to reflect the matters set out above and would be likely to apply to anyone seeking to manage the Property other than Ms Akorita herself: there is no evidence Mr Pickard has anything against Ms Akorita.
116. It is unnecessary to take each item of the disagreements in detail. The first is that the failed application determined by the December 2018 Decision and Directions demonstrates dissatisfaction with management by the Manager on the part of Ms Akorita. That may be so but the application to discharge the Management Order was squarely rejected then and the argument has no more merit now. Reference is made in the Skeleton Argument on behalf of Ms Akorita to asserted issues with the Property as at July 2018. However, the Tribunal stated that it would not revisit matters and does not revisit matters, in this instance those pre-dating that application and dealt with by the Tribunal at that time in the December 2018 Decision and Directions dismissing Ms Akorita's application. At that time the Tribunal had been presented with a substantial quantity of documentation, carried out an inspection of the Property and made detailed findings. The Tribunal does nevertheless note that one of the allegations levied against the Manager by Ms Akorita at that time was that he had failed to act on her instructions. Given the Tribunals' consideration of matters above, the application supports the picture of Ms Akorita, who had delayed in providing information to the Manager following the Order, being unhappy about not being able to dictate the Manager's approach, and does not paint any other picture.
117. Likewise, the assertion about the Manager's application in respect of the reasonable level of service charges observes that the Tribunal rejected criticisms of the Manager made by the Active Respondents but suggests that the disagreement between them and the Manager is a basis for not

extending the Management Order. However, the fact that the Manager's approach was reasonable but the Respondent's refuses to accept that goes not to detract from extension of the term of the Management Order. Rather the Tribunal finds that it goes to magnify concern as to the position as and when the Order may end.

118. The third item, namely that Ms Akorita has sought clarification of some expenditure items was not explored at any length by the parties in the hearing. There was very limited questioning of the Manager. The Tribunal finds, doing the best it can, that there are certain matters where clarification has been sought and that has not been provided and where the Managers' explanations did not suggest that he treated responding with much importance, whereas the impression created was that he could have done more and it would have been helpful if he had done so. The Tribunal received insufficient on which to make any more specific factual finding. The Tribunal does not consider the item takes either side far when compared with other considerations.
119. The fourth item is that there remain some issues with the Property. However, elements predated the 2018 Decision and Directions. One point was that items agreed in a meeting had not been carried through, based on the witness statement of Mr and Mrs Cooper saying just that. The statement neither explained or otherwise expanded on the matter and no clarification was forthcoming in evidence: in particular no response was sought in questioning of the Manager. The point was not advanced with clarity such that the Tribunal can give much weight to it.
120. The Tribunal considers that there may be some scope for improvement in dealings by the Manager and the importance of clear communication and dealing with matters as swiftly as funds allow should be obvious. It is abundantly clear that the Active Respondents have, regrettably, been want to find any fault available and to hold a negative perception of matters. The Manager should, within reason, do what he properly can to limit that.
121. The Tribunal does not find any of the items within this line of argument to be of significance in assisting the Active Respondents. Indeed, the highlighting of their dissatisfaction and challenges from the outset, achieves the opposite. The Tribunal notes the findings previously made by the Tribunal and the Upper Tribunal that the Property is "now very much better managed than it had been"- see for example the refusal by the Upper Tribunal of permission to appeal the December 2018 Decision and Directions.
122. That the Manager does not enjoy the support of the majority of the lessees is certainly not a change. The Active Respondents, particularly Ms Akorita, opposed the appointment of the Manager from the start. They have clearly never reconciled themselves to it, despite the clear findings of the Tribunal as to why such appointment was appropriate. The ongoing lack of support and the asserted dissatisfaction stems, the Tribunal finds, overwhelmingly from the Active Respondents not accepting the reasons for the Manager's appointment and not wishing the Manager to be in place,

causing them to fail to fully co-operate, indeed to cause difficulty for the Manager. In doing so, they advance a compelling argument why a Manager is appropriate rather than why the Order should end.

123. Contrary to Ms Akorita's case that such a history of disagreement is a reason for the Management Order ending, it is a further powerful reason for the Order continuing. It demonstrates a failure on the part of Ms Akorita to accept anything other than her will and indicates that any management of the Property by her- or indeed by any agent under her instructions- would not be satisfactory management. As such it supports the finding that an extension of the Management Order is just and convenient.

124. That it is submitted that continuation of the Management Order would be likely to lead to further litigation is a singularly unattractive position for a Respondent to advance. Ms Akorita might better consider the merits of reconciling herself to the situation and working constructively.

125. The Tribunal further notes that Ms Akorita, in addition to her own applications during the term of the Management Order, opposed the Manager's application for a determination of the reasonableness of service charges for 2019 and 2020 on grounds which were largely dismissed. Those included a serious allegation that the Manager was pursuing a particular course because it would lead to a larger fee on his part, which the Tribunal found without foundation. It is only right to record that Ms Akorita and the Active Respondents succeeded in arguing that the Lease provisions did not enable the replacement of the roof at the time. If Ms Akorita had pursued that argument without the several others advanced, that might have been reasonable and less suggestive of an overly combative or litigious approach.

a) "The duration of a court appointed manager should be limited"

126. The Tribunal accepts the proposition that a management order should be limited to a particular duration, as opposed to being indefinite. It not entirely correct to say that a management order should be short one so as to enable the Tribunal to review the position thoroughly at the end of the term. A management order will always be reviewed appropriately at the end of its term where an extension is sought, whether the initial term is short or not.

127. In contrast, the period of a management order will reflect the term considered appropriate at the time of the order and mindful that the order may be extended or otherwise varied or discharged on application in the circumstances that then exist at the time of a subsequent decision being made. This is such a decision. The relevant circumstances are considered below. That fact of there having been a 3- year term to date does not of itself carry significant weight, especially where the Tribunal has found that the Manager has been prevented from making the progress otherwise likely as a result of the several instances of litigation which have occupied

his time and lack of funds prevents the undertaking of necessary major works.

128. The Tribunal does not consider this point to be a strong one or to add much to the other points made.

e) The majority view must be taken into account

129. The Tribunal accepts that respect must be given to the majority view. The Tribunal must assess the merits of the majority view and the wider situation. The Tribunal records that it has taken that view into account and has given it the weight that it considers appropriate in light of the circumstances of the case and the evidence and submissions read and heard. In the circumstances of this case, whilst the majority view is an element which weighs against the extension of the term of the Management Order, the majority of the lessees opposing such an extension, the Tribunal finds that the scales are raised only to a modest extent by this factor.

130. The Tribunal finds that the majority view reflects to a large degree the fact that the majority of leases are held by Ms Akorita (and to an extent her husband, Mr Burkin), where it is she who managed prior to the Management Order and vehemently opposed it from the outset. To that extent, the majority being opposed to the variation of the Management Order is almost a given and so adds very little to the picture and hence, as indicated above, very little weight to an argument against the variation.

131. The Tribunal finds that whilst Mr and Mrs Cooper form part of that majority view, that reflects their opposition to the Management Order from the outset and their opinion, firmly rejected previously by the Tribunal, that management was being carried out well by Ms Akorita and no Order should have been made.

The Freeholder may become insolvent

132. This point is dealt with in the witness statement of Ms Akorita but not, perhaps wisely, the Skeleton Argument prepared on her behalf. It is another highly unattractive point to make. It suggests that Ms Akorita is prepared to cause considerable difficulties for all of the parties.

133. The Tribunal finds that the Freeholder has been caused liability for payment of legal costs because of Ms Akorita's unsuccessful actions. The Tribunal finds accounting costs incurred, of 60% of the company's apparent income to be disproportionate and unreasonable. The Tribunal finds that Ms Akorita may very well make the Freeholder insolvent due to further money said to be owed by it to her, with echoes of the debts prior to the Management Order and understandably of considerable concern to the Tribunal then.

134. However, the Tribunal considers that the threat of such an eventuality is no reason to support the position of the party making it. Indeed, quite the

opposite. The Tribunal finds that the fact of Ms Akorita creating such a situation and seeking to rely upon it exacerbates concerns about returning the management of the Property to her.

135. The finding and consideration in respect of the incurring of fees of a managing agent are also very relevant but are not repeated.

The appointment of the Manager may hinder sale or re-mortgage

136. The final point made by Ms Akorita in her witness statement that it may be harder to sell or re-mortgage the flats because of the appointment of the Manager is made briefly and wisely so. It is not a strong point. Even if it is correct, it cannot weigh that heavily as compared to considerations of proper management of the Property.
137. More significantly, the Tribunal has been provided with no evidence that the proposition is correct. Ms Akorita has presented her opinion, no more and no less. Equally, the Tribunal doubts that a flat in a Property in which there are issues with management would be attractive to a purchaser. It may be that in contrast, the presence of a Manager could be a positive, although there is no need for the Tribunal to descend into speculation on the matter, which is not determinative of this application.

Variation of the Management Order- in principle

138. The Tribunal considers that it is just and convenient to vary the Management Order to extend the term and continue the management of the Property by the Manager. The observations below do not seek to repeat the findings and consideration above at length and do not detract from them.
139. The strongest of the bases advanced by the Applicant is that in the absence of variation of the Order, the management of the Property would revert back to the Freeholder and, whether that involved the instruction of a managing agent or not, that is not the just and convenient outcome, both because of the specific issues which would arise in respect of the major works and for the other reasons given.
140. The Tribunal considered in the further Decision and Order made in respect of costs (“the January 2018 Decision and Order”) that Ms Akorita had sought to “distract, disrupt, deter and delay” in order to prevent the appointment of the Manager (paragraph 9). The Tribunal finds now that Ms Akorita has essentially done what she could since the Management Order to challenge every determination not in her favour, to tie the Manager’s time up in litigation and to otherwise frustrate the ability of the Manager to properly manage the Property, including but not limited to her failure to pay the service charges in respect of major works. She has been, and the Tribunal finds on the evidence still is, unable to accept anything other than how she would choose to deal with matters, showing no indication of having learned anything from the Tribunal making a Management Order.

141. None of the findings made by the Tribunal and explained above render it more appropriate for the Tribunal to allow the Property to return to the management of Ms Akorita and away from the Manager, responsible to the Tribunal for the proper management of the Property. The Manager may not have done a perfect job but that would be extremely difficult in the circumstances, such that any proper criticism must be very limited. The conduct of the Active Respondents weighs far more heavily.
142. It scarcely needs saying that a manager with support from the lessees is likely to find the going easier than one without that support. A manager who is specifically obstructed by hurdles which delay progress is likely to progress that much harder.
143. The lessees might sensibly reflect on the fact that to hinder the Manager's efforts to deal with the Property and related issues is likely to be to their detriment, not their advantage. Delay in payment of service charges and an inability on the part of the Manager to pay for works and so to arrange for contractors to undertake works is likely to lead to an increase in the disrepair to the Property, an increased level of works, increased cost for works and a longer time for them to be undertaken. It may indeed lead to further deterioration of the roof and there be catastrophic failure or otherwise a point be reached at which patch repairs no longer suffice.
144. Hindering the Manager's efforts is more generally likely to add to cost and may very well cause a management order to remain in place longer than might have been the case if the other parties had facilitated the given manager's ability to take the necessary steps in a timely and efficient fashion. The Order may remain in place longer than if those who might wish to be involved in the management of a property had demonstrated an understanding of the reason for the Manager's appointment and how they might appropriately address management in the future, at such time as any management order may end.
145. The Tribunal determines that it is just and convenient to continue the appointment of Mr Gary Pickard as the Manager of Marina Heights under that Order.
146. The Tribunal determines that the primary purposes of the Management Order are arranging and overseeing the carrying out of works to the Property (save any completed during the period of the Interim Management Order) in relation patch repairs to the roof for which a tender process will be required and in relation to pointing and further works as already the subject of a tender process ("the pointing and further major works"); arranging for any appropriate further survey of or other report on the building with a view to producing a programme of repairs and maintenance (if required) to implement the works patch roof repairs, carry out any appropriate section 20 consultation on the proposed patch roof repair works, tender for those patch roof repairs works and appoint appropriate contractors for those and the pointing and further major works; to raise the funds by way of service charges to meet the costs of the

reasonable works, to collect in those funds- including by pursuing actions to ensure payment as reasonably required to facilitate the collection of funds as soon as practicable- and by ensuring the undertaking of the patch roof repairs and the pointing and further major works as soon as in receipt of the funds to pay for those works, making payments in relation to those works as appropriate and additionally to more generally manage the Property in the best interests of all of the Lessees, including ensuring the undertaking of any further repair, maintenance and decoration works appropriate and maintaining proper records and accounts.

147. The Management Order in place is comprehensive and reflects the current approach to Management Orders. However, whilst no major update is required, the Tribunal determines that it is appropriate to slightly alter the terms of the Management Order. Accordingly, a varied form of Management Order accompanies this Decision.
148. The Order gives the Manager the power to collect service charges in advance and if necessary, to take action to enforce payment. The major works will need to be paid for by the leaseholders and Mr Pickard will necessarily need to be in possession of the requisite funds in order to meet the costs of any report/ tender process and of the works themselves, including any management cost.
149. The Order identifies the work to be undertaken pursuant to the Management Order and such of that work as will be included in the Manager's monthly fees and also that which will not be included but which will rather be separately charged for. The Order provides for further directions or determinations being sought where required.

Variation of the Management Order- length of extension

150. The Tribunal determines that it is just and convenient to vary the Management Order to extend it for a period of just under 3 years from the current date, the period not being a strict 3 years but set to end more logically at the end of a calendar month. The Tribunal has considered alternative terms for the variation of the Management Order. Despite the ability of the parties to apply to discharge or vary the Order at a future date, the Tribunal does not consider it appropriate to extend for the full 5 more years sought by the Applicant.
151. The Order has run for approximately 3 1/3 years so far, albeit in somewhat difficult circumstances. There is no serious room for doubt that it needs to run for a sufficient time for the major works to be completed, albeit that such works were far from the sole reason for the Order. It is not currently easy to identify a time at which the Tribunal can be confident that the Management Order can end. However, a further 5 years is a long time in the context of the length of the Order so far. It is impossible to know what may develop and whether any circumstances may alter. There is no compelling reason advanced as to why only further 5 years and no shorter time would be just and convenient. Taking matters in the round, the

Tribunal is not persuaded that there is one and that a 5- year extension is the appropriate approach.

152. On the other hand, the Tribunal has found that the Respondents have failed to comply with the service charges demands issues by the Manager, which amount to less than the cost of the major works which the Tribunal has found reasonable and where such payment may have enabled the commencement of those works, or at least relatively modest further service charge demands to so enable the works. The sums overdue will need to be collected before the required works can be attended to. It is entirely possible that the Manager may need to take steps to obtain payment and to ensure funds are in place before the major works contract commences and that there may be some delay, albeit that in the meantime the Property is likely to deteriorate and any non-payers may simply make matters more difficult and costly for themselves and their fellow lessees.
153. It is also apparent that a consultation process will need to be followed in respect of patch roof repairs and that such a process may be subject to challenge or that the acceptance of a quotation for the works may be challenged. All of that would involve further time being spent before those works commence, to say nothing of the potential time and expense which may be involved in challenges.
154. The Tribunal sincerely trusts that the Manager will be able to undertake any further consultation as swiftly as practicable and will receive payment of the sums demanded by way of service charges to date and those which will inevitably follow, within a short period. However, the Tribunal considers itself compelled to allow for matters proceeding less smoothly and swiftly and for the period for completion of all of the major works being longer than preferable.
155. The Tribunal considers that there should be time allowed within the variation for the parties to be able to consider the, the Tribunal trusts, positive impact once the major works have been undertaken and time passed since litigation between the parties and for the parties to be able to reflect on the situation, before any further application for a variation to extend time or to discharge the Management Order may need to be made.
156. The Tribunal considers that 3 years (or in the event slightly under that) is the appropriate period in order to achieve those objectives and to be the just and convenient variation to order.

Decision

157. In accordance with section 24(9) Landlord and Tenant Act 1987, Mr Gary Pickard appointment as the Manager of the Property, Marina Heights, 63 West Hill Road, St Leonards-on-Sea, East Sussex, TN38 0NF continues as from the date of the Order.
158. The Appointment is subject to Mr Pickard maintaining a current certificate for professional indemnity insurance for a level of indemnity of

at least £2million which specifically mentions the duties of a Tribunal-appointed manager.

159. The Order shall continue until 31st December 2023. If a party wishes to extend the Order s/he must give notice prior to 30th September 2023.

160. The Manager shall manage the Property in accordance with:

- a) the Directions and Schedule of Functions and Services attached to the Management Order;
- b) save where modified by this Order, the respective obligations of the Landlord and the Lease whereby the Property is demised by the Landlord and in particular with regard to repair, decoration, provision of services and insurance of the Property;
- c) the duties of a Manager set out in the Service Charge Residential Management Code (“the Code”) (3rd Edition) or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993 and
- d) the provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.



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

Case Reference : CHI/21UD/LVM/2020/0003

Property : Marina Heights, 63 West Hill Road
St Leonards-on-Sea, East Sussex
TN38 0NF

Applicants : Mr Kevin Hayes

Representative :

Respondent : Mr Gary Pickard (Manager) (1)
Ms Rita Akorita (2)
Mr Philip Burkin (3)
Mr Richard Cooper and Mrs Jean Cooper (4)
Marina Heights (St Leonards) Limited (5)

Representative : Ms Seal (Counsel) (2)
Ms Akorita (3)
Mrs Cooper (4)

Type of Application : Appointment of a manager Section 24
Freeholder and Tenant Act 1987

Tribunal Member(s) : Judge J Dobson
Mr W Gater FRICS MCI Arb
Mr N Robinson FRICS

Date of Order : 5th January 2021
Corrected 8th February 2021

**VARIATION OF MANAGEMENT ORDER
Correction of clerical error in paragraph 8
pursuant to rule to of The Tribunal Procedure (First Tier
Tribunal) (Property Chamber) Rules 2013**

1. In this Order:
 - 1.1. **“The Act”** means the Landlord and Tenant Act 1987
 - 1.2. **“The Property”** includes all those parts of the property known as Marina Heights, 63 West Hill Road, St Leonards-on-Sea, East Sussex, TN38 0NF, the freehold title to which is registered under title number HT4222
 - 1.3. **“The Freeholder”** means Marina Heights (St Leonards) Limited or their successors in title to the reversion immediately expectant upon the Leases
 - 1.4. **“The Lessees”** means the proprietors for the time being of the Leases whether as lessee or under-lessee and "Lessee" shall be construed accordingly
 - 1.5. **“The Leases”** means all leases and/or underleases of flats in the Property
 - 1.6. **“The Manager”** means Mr Gary Pickard
 - 1.7. **“The Varied Management Order”** and **“the Order”** mean this Order of today’s date
 - 1.8. **“The Functions”** means any functions in connection with the management of the Property, including any obligations and powers of the Freeholder under the Leases and including, but not limited to, the matters set out in the Schedule of Functions and Services referred to in and attached to this The Management Order
 - 1.9. **“The Code”** means the Royal Institute of Chartered Surveyors Service Charge Residential Management Code 3rd Edition
 - 1.10. **“The Tribunal”** means the First-Tier Tribunal (Property Chamber)
 - 1.11. Reference to “the Lessees” shall be a reference to them both jointly and severally and the obligations on each of their parts shall be owed respectively jointly and severally and shall include their respective successors in title.
2. In accordance with s.24 of the Act the Management Order is varied such that the Order shall continue but in the terms of this Varied Management Order **until 31st December 2023**

3. In the event that any party wishes to extend the term of the Management Order, then they shall each / jointly apply or write (as appropriate) to the Tribunal by **30th September 2023** to inform the Tribunal of their request. If all parties agree to the extension of the term of the Management Order and agree the length of the extension, then the Tribunal may, if it determines it appropriate to do so, make any further Order on paper.
4. The primary purposes of the Varied Management Order are:
 - i) arranging and overseeing the carrying out of works to the Property (save any completed during the period of the Interim Management Order) in relation patch repairs to the roof for which a tender process will be required and in relation to pointing and further works as already the subject of a tender process (“the pointing and further major works”);
 - ii) arranging for any appropriate further survey of or other report on the building with a view to producing a programme of repairs and maintenance (if required) to implement the works patch roof repairs, carry out any appropriate section 20 consultation on the proposed patch roof repair works, tender for those patch roof repairs works and appoint appropriate contractors for those and the pointing and further major works;
 - iii) to raise the funds by way of service charges to meet the costs of the reasonable works, to collect in those funds- including by pursuing actions to ensure payment as reasonably required to facilitate the collection of funds as soon as practicable- and by ensuring the undertaking of the patch roof repairs and the pointing and further major works as soon as in receipt of the funds to pay for those works, making payments in relation to those works as appropriate; and
 - iv) additionally, to more generally manage the Property in the best interests of all of the Lessees, including ensuring the undertaking of any further repair, maintenance and decoration works appropriate and maintaining proper records and accounts.
5. The Manager shall manage the Property in accordance with:
 - a) the Directions and Schedule of Functions and Services attached to this Order;
 - b) save where modified by this Order, the respective obligations of the Freeholder and the Lease whereby the Property is demised by the Freeholder and in particular with regard to repair, decoration, provision of services and insurance of the Property;
 - c) the duties of a Manager set out in the Service Charge Residential Management Code (“the Code”) (3rd Edition) or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development act 1993; and
 - d) The provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.

6. Notwithstanding any provision in the Lease, and for the avoidance of any doubt, this order applies permits the Manager to recover the costs as service charges of any works that may be construed as improvements to the Property.
7. The Manager shall keep the Freeholder and the Lessees informed of the progress of the works and will supply them with copies of all material correspondence and documents relating to works at the Building. The Manager will report to the Freeholder and the Lessees on the progress of the works every month.
8. The Manager shall register the Order against the Freeholder's registered title HT4222 as a restriction under the Land Registration Act 2002 or any subsequent Act. The wording of the restriction shall be:

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without a certificate signed by the applicant for registration [or their conveyancer] that the provisions of paragraph 17 of the Order of the Tribunal dated 5th January 2021 have been complied with.”
9. Pursuant to s.20C of the Landlord and Tenant Act 1985 and on the Tribunal finding it to be just and equitable, the Respondent's costs for this application shall not be added to the service charges.

DIRECTIONS

10. From the date this Order comes into effect, namely 5th January 2021 no other party including the Freeholder 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.
11. Where there is a conflict between this Order and any provision in any Lease of a flat within the Property, the terms of this Final Management Order shall prevail.
12. The Freeholder and its servants or agents and the Lessees shall give all reasonable assistance and co-operation to the Manager in pursuance of his functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of his said rights, duties or powers by due process of law. For the avoidance of doubt this shall not prevent the Freeholder from bringing legal proceedings (or any other due process of law) should the Manager act unlawfully and/or negligently and/or contrary to the powers and duties set out in this Order.
13. The Freeholder and its servants or agents and the Lessees shall allow the Manager and his employees and agents access to all parts of the Property in order that the Manager might conveniently perform his functions and duties and exercise his powers under this Final Management Order.
14. The rights and liabilities of the Freeholder arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall from the date of this order retain the rights and liabilities of the Manager throughout the term of this Final Management Order.
15. The Manager shall act fairly and impartially in his dealings to all parties concerned in respect of the Property.
16. The Manager shall in the performance of his functions under this Order exercise the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions.
17. On any disposition [other than a charge] of the Freeholder's estate in the property registered under title no HT4222, the Freeholder will procure from the disponee of the property, a direct covenant with the Manager, that the disponee will (a) comply with the terms of this order and (b) on any future disposition (other than a charge) procure a direct covenant in the same terms from its disponee.
18. From the date of appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £5million and shall provide copies of the current cover note upon a request being made by any Lessee of all or any part of the property, the Freeholder or the Tribunal. The Certificate should specifically state that it applies to the duties of a Tribunal appointed Manager.

19. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of the Leases) in accordance with the Schedule of Functions and Services attached.
20. Within 56 days of the conclusion of the Management Order the Manager shall prepare final closing accounts. The Manager shall also serve copies of the accounts on the Freeholder, and Lessees who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter the Manager shall reimburse any unexpended monies to the paying parties, or, if it be the case any new Tribunal appointed manager or, in the case of dispute, as decided by the Tribunal upon application by any interested party. The Manager shall supply a copy of the Final Accounts to the Tribunal.
21. The Manager shall prepare reports by no later than 30th June 2021, 30th June 2022 and then 30th June 2023 on the progress of the management of the Property up to that date and shall electronically file such report with the Tribunal and provide a copy to the Respondents. The report shall provide:
 - i) an update generally, including in which as to major works;
 - ii) indicate any issues that have arisen and remain, with a plan to address them and
 - iii) set out any specific matters to be addressed before 30th June 2022 and whether those are anticipated to be completed before that.
22. The Manager may apply to the Tribunal for further directions in accordance with section 24(4) of the Landlord and Tenant Act 1987. Such directions may include (but are not limited to) the following:
 - a. any clarification or confirmation of the Manager's powers and responsibilities, including but not limited to those additional to a managing agent;
 - b. any failure by any party to comply with an obligation imposed by this Order;
 - c. further directions in the event that there are insufficient sums held by him to discharge his obligations under this Order and/or pay the Manager's remuneration; and/or
 - d. any other matter in connection with the management of the Property including inter alia his entitlement to be remunerated in respect of any matter or step he is required to take in the exercise of his functions.

SCHEDULE OF FUNCTIONS AND SERVICES

The Manager shall:

Insurance

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

Ground Rent

3. Collect and account for the ground rents payable under the Leases.

Service charge

4. Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the under-lessees as per the percentage share of under the terms of their under-lease.
5. Place, supervise and administer contacts and check demands for payment for goods, services and equipment supplied for the benefit of the property within the service charge budget.
6. Have the authority to, as soon as the Manager shall consider it appropriate from the date of this order and in addition to the provisions in the Leases, demand payments as the Manager considers appropriate, including but not limited to:
 - i) in advance to facilitate urgent and other reports and works, to demand;
 - ii) regular payments quarterly, half- yearly or as the Manager otherwise considers appropriate;
 - iii) balancing payments at the end of the accounting year;
 - iv) to establish, build up and maintain a reserve/sinking fund to meet the Freeholder's obligations under the Lease and/ or to contribute to the cost of major works.
7. Have the authority to allocate credits of service charge due to Lessees at the end of the accounting year to the reserve/ sinking fund.
8. Administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees as per the percentage share under the terms of their Leases.
9. Demand and collect service charges, insurance premiums and any other payments due from the Lessees and collect arrears of service charge and insurance and any other payments that have accrued after his appointment.
10. Instruct solicitors or appropriate agents as the Manager shall in his discretion determine appropriate to recover unpaid rents, insurance

premiums and service charges, and further to recover any other monies due to the Freeholder upon the Freeholder's instructions.

11. Place, supervise and administer contracts and check demands for payment for goods, services and equipment supplied for the benefit of the Property within the service charge budget.
12. Recover through the service charge the reasonable cost of any surveyors, architects, solicitors, counsel and other professional persons or firms fees incurred in obtaining advice, assistance or representation reasonably required by him whilst carrying out his functions under the Order and including in respect of any application to the Tribunal for further directions or for determination of the reasonableness of service charges, whether in relation to major works or otherwise.
13. Prepare and submit an annual statement of account detailing all monies received and expended on its behalf. Such account need not be certified by a surveyor unless the Manager thinks fit and the provisions of clause 4.2(1) of the Lease shall not apply for the duration of this Order.
14. Produce for inspection upon reasonable written notice, receipts or other evidence of expenditure.
15. Account for all sums collected in accordance with the Accounts Regulations as issued by the Royal Institution for Chartered Surveyors, subject to the Manager receiving interest on the monies whilst they are in his client account. Any reserve/sinking fund money to be held in a separate client account with interest accruing to the Freeholder.
16. Produce a final account ("the Final Accounts") at the end of the term of his appointment of the sums received and expended by him throughout the period of his appointment.
17. Pay any sums held in the service charge account to the person for the time being entitled to receive the payment of service charges under the Leases.

Administration Charges

18. Recover administration charges from individual Lessees for his costs incurred in collecting service charges and insurance which includes the costs of reminder letters, transfer of files to solicitors and letters before action.
19. Publish the costs of his charges for debt recovery and the timetable allowed for each course of action. Such charges will be subject to legal requirements as set out in schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Accounts

20. Maintain efficient records and books of account, which are open to inspection by the Freeholder and the Lessees. Upon request, produce for

inspection, receipts or other evidence of expenditure and provide VAT invoices (if any).

21. Maintain on trust interest-bearing accounts at such bank or building society, as the Manager shall from time to time decide, into which, service charge contributions and reserve/ sinking fund money, shall be paid.
22. Account for sums collected in accordance with the Code.

Repair and Maintenance

23. Administer contracts entered into in respect of the Property.
24. Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems and deal with reasonable enquiries raised by the Lessees. The Manager shall also deal with all building maintenance relating to the services and structure of the Property, which includes compliance with all regulatory and statutory requirements.
25. Consider the works to be carried out to the Property in the interest of good estate management.
26. Arrange for any further survey of and/or report into the property with a view to clarifying the scope of the urgent and other works required.
27. Arrange and supervise the urgent and any other major works which are required to be carried out to the Property including preparing and serving any notices and preparing or arranging by a surveyor or other suitable professional the preparation of a specification of works and obtaining competitive tenders and selecting contractors.
28. Administer a planned maintenance programme to allow for, including but not limited to, the periodic re-decoration of the exterior and interior parts and repair of the property following the completion of the patch roof repairs and the pointing and further major works.
29. Liaise with the relevant statutory bodies responsible for buildings.
30. Ensure that the Freeholder, and the Lessees are consulted on any proposed works to the Property and give proper regard to their views, including ensuring that copies of programmes of planned and major works are sent to the Freeholder and the Lessees.
31. Incur any necessary expenditure in respect of the provision of all necessary health and safety equipment and in complying with all regulatory and statutory requirements.
32. Inspect, or arrange for the inspection of, such of the common parts of the Property as can be inspected safely and without undue difficulty and without use of equipment, on a regular basis and at the Manager's discretion, to

ascertain for the purpose of day-to-day management, the general condition of the common parts.

Breaches of Covenant by the Lessees

33. Have the authority to take enforcement or other appropriate action in relation to any breach of covenant by one or more Lessees other than in relation to payments, if the Manager considers such action appropriate.

Fees

34. Charge fees of £1750 plus VAT include those included in the Annual Fee at paragraph 3.4 of the Code.
35. Charge for any work carried out over and above those services, save as provided for below, at the rate of £95 plus VAT per hour or any greater sum as may subsequently be authorised in advance by the Tribunal, in respect of which the Manager may apply.
36. Charge fees in respect of major works, namely those costing more than £1750, carried out to the property in addition to the professional fees of any architect, surveyor, solicitor or other appropriate person in the preparation of specifications or schedules of work, obtaining tenders and administration of a contract for such works, such fees to include where required the preparation and service of any notices pursuant to section 20 of the Landlord and Tenant Act 1985, at the rate of 5% plus VAT and disbursements on any such works to the extent only that such fees are authorised in advance or subsequently by the Tribunal.
37. Charge VAT on all the fees quoted above where appropriate at the rate prevailing on the date of invoicing.
38. Review the fees annually at the Manager's discretion and in default of agreement with the Freeholder and the Lessees, be at liberty upon giving 14 days written notice to increase the fees in line with the relevant annual level of increase in the Consumer Price Index or such greater level as may be authorised in advance by the Tribunal.

Right to Bring Legal Proceedings

39. Be entitled to bring proceedings and/ or defend proceedings in any court or tribunal in respect of the Property and/ or sums owed or otherwise payable in respect of the Property, including any causes of action (whether contractual or tortious) accruing before or after the date of the Interim Management Order.
40. Such entitlement shall include, but shall not be limited to, bringing proceedings in respect of any arrears of service charge and/or ground rent attributable to any of the flats in the Property and for which purpose 'proceedings' shall include any application made under Part 7 or Part 8 of the Civil Procedure Rules 1998 for judgment in the County Court or High

Court including a charging Order or any application made to the First Tier Tribunal under s.27A Landlord and Tenant Act 1985 or s.168(4) and Schedule 11 of the Commonhold & Leasehold Reform Act 2002 and shall further include any appeal made against any decision made in any such proceedings.

41. Be entitled to instruct solicitors and counsel and other professionals for the taking of legal proceedings.
42. Be entitled to be reimbursed from the service charge account any costs, disbursements or VAT for taking proceedings including any fees payable to solicitors, counsel and any accountant, surveyor or other expert on an indemnity basis. If any of those costs are recovered direct from the defaulting Tenant or Freeholder those costs should be refunded to the service charge account.

Complaints Procedure

43. The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors. Details of the procedure are available from the institution on request.