

**Southern Rent Assessment Panel and Leasehold Valuation Tribunal**

**Case No. CHI/00ML/LIS/2008/0017**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
SECTION 27A and SECTION 20C of the LANDLORD AND TENANT ACT 1985  
SECTION 24 of the LANDLORD AND TENANT ACT 1987**

**Property:** 53 Brunswick Road Hove BN3 1DH

**Applicants:** Mr M Dover (tenant)

**Respondent:** Mr P Leclerq (landlord)

**Appearances:** For the Applicant:  
Ms M Knowles, Solicitor  
Of Osler Donegan Taylor

For the Respondent:  
Mr P Leclerq (08/09/2008)  
Mr M Leclerq (17/11/2008)

**Date of Application:** 25 March 2008

**Pre-Trial Review:** 30 April 2008

**Hearings:** 08 September 2008  
17 November 2008

**Decision:** 22 December 2008

**Members of the Leasehold Valuation Tribunal**

Ms J A Talbot MA  
Mr R A Wilkey FRICS  
Mrs J K Morris

**Ref: CHI/00M/LIS/2008/0017**

**Property: 53 Brunswick Road, Hove, East Sussex BN3 1DH**

**Application**

1. These were 2 Applications made on 25 March 2008 by Mr Dover, tenant of the Ground Floor Flat 53 Brunswick Road Hove BN3 1DH: (1) pursuant to Sections 27A & 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination on the payability of service charges for the years ending 25 December 2001, 2002, 2003, 2004, 2005 and 2006; (2) pursuant to Section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") for an appointment of manager order.

**Background**

2. An oral Pre-Trial Review was held in Hove on 30 April 2008 and Directions were issued on 02 May 2008 that both the applications would be heard together. Mr Leclerq as the Respondent was directed to produce a Statement in reply and this was prepared by Ms C Whiteman, solicitor of Dean Wilson Laing but he was not represented at the hearing. A further Statement and documentation was produced for Mr Dover by Ms Knowles.

**Jurisdiction**

**Section 27A of the 1985 Act**

3. The Tribunal has power under Section 27A of the Landlord and Tenant Act 1985 to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

**Section 24 of the 1987 Act**

*Appointment of a manager by the court*

*(1) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely-*

*(a) where the tribunal is satisfied-*

- (i) that the landlord is either in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the property in question or any part of them or (in the case of an obligation dependent upon notice) would be in breach of any such obligation but for the fact that it has no been reasonably practicable for the tenant to give the appropriate notice, and*
- (ii) that it is just and convenient to make the order in all the circumstances of the case; or*

*(ab) where the tribunal is satisfied-*

- (i) *that unreasonable service charges have been made, or are proposed or likely to be made, and*
  - (ii) *that it is just and convenient to make the order in all the circumstances of the case; or*
- (ac) *where the tribunal is satisfied-*
- (i) *that the landlord has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and*
  - (ii) *that it is just and convenient to make the order in all the circumstances of the case; or*
- (b) *where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.*

### Lease

4. The Tribunal had a copy of the lease of the Ground Floor Flat dated 28 June 1988 and is for a term of 125 years from 25 March 1985 at a ground rent of £50 per year and rising thereafter.
5. The provisions relating to the calculation and payment of the service charge are to be found at Clause 4(B) of the lease. The tenant's share of the maintenance fund is 20% of "all moneys expended by the Lessor in complying with its covenants in relation to the Building as set forth in Clauses 6(B) and (D) hereof".
6. The tenant is to pay an interim charge in advance at the lessor's discretion on 24 June and 25 December each year with the balance due after the service of certified annual maintenance accounts by the lessor "as soon as practicable ... setting out the costs incurred and monies expended by the Lessor during the year immediately prior to 25 December of the previous year" (Clause 6(D)(vi)(b)).
7. Clause 6(D) requires the landlord, amongst other things, to "keep in good and substantial repair and condition" the roofs, gutters, structure, common parts and water pipes.

### Inspection

8. The Tribunal inspected the property before the hearing on 8 September. It comprised a mid-terrace 5 storey bow-fronted town house probably constructed circa 1850 and situated in a residential area of Hove near the seafront and all amenities. It has been altered internally over the years and is now arranged as self contained flats on the ground floor and basement, sold on long leases, with the upper floors arranged as bedsitters and let directly by the landlord on Assured Shorthold tenancies.
9. The main roof could not be properly inspected from ground level. The front elevation is cement rendered and painted. The exterior of the property was poorly maintained, with numerous cracks to the front elevation, particularly above the bay window of the ground floor flat, and further defects to the section of balcony above the main entrance door. The external paintwork is deteriorating to rendered and wood

surfaces. There is a split downpipe with vegetation growing in it. The front steps were worn and uneven. The rear elevations are similarly in poor order with numerous cracks to the rendering and parts off key, and paintwork in poor condition.

10. The ground floor flat was unoccupied but is normally sublet. The Tribunal's attention was drawn to damp and perishing plaster in the corner of the front room. 2 holes in the wall immediately to the south of the bay window had been recently filled. The Tribunal was informed that various patch ceiling repairs had been done following leaks from the flat upstairs.
11. The common parts were in poor condition and decorative order. The carpet was worn and of poor quality. The Tribunal particularly noted cracked and displaced plaster to a ceiling on the upper half landing and a defective and very loose section of handrail to part of the upper staircase.

### **Hearing**

12. The hearings took place in Hove over 2 days on 9 September and 17 November 2008. Mr Dover attended, represented by solicitor Ms Knowles, and accompanied by his letting agent Mr Harrington. The Respondent Mr P Leclercq attended in person on the first date, and because of illness, was represented with his authority by his brother Mr M Leclercq at the reconvened hearing. Matters relating to the service charge dispute were dealt with on 8 September and the appointment of manager application on 17 November.
13. In this Decision for ease of reference the Tribunal's decision on each disputed item of service charge expenditure follows the consideration of each item in dispute.

### **Service Charges**

#### **General: liability to pay service charges**

14. Ms Knowles's central case was that no service charges were payable for the period in dispute, because they had not been validly demanded in accordance with the terms of the lease and were therefore not lawfully due. Further or in the alternative, Ms Knowles submitted that certain items of service charge expenditure were not reasonably incurred, and that the statutory consultation requirements under Section 20 of the 1985 Act had not been complied with.
15. Ms Knowles argued that Mr Leclercq had not produced any annual accounts for the years in question until after service of Notice under Section 22 of the 1987 Act. The accounts for all the years in issue are dated 13/07/2008. As the lease provided that the lessor must serve certified accounts as soon as practicable after 30 December each year, following which the tenant must pay the balance of any service charges, Mr Leclercq was in breach of the lease and the service charges were not payable. The late service of the accounts did not cure this defect, because the accounts were not properly certified, were confusing and inaccurate. It was unclear what works had been carried out and when. Much of the expenditure claimed in the accounts was not supported by the invoices supplied by Mr Leclercq.

16. In addition, service charges demands had not been raised in accordance with the lease. Instead of an interim charge demanded twice yearly, Mr Leclerq had sent demands at random intervals on small pieces of paper with the headings "rent, insurance, ground rent, maintenance" with amounts entered in handwriting. Several examples were attached to Mr Dover's witness statement. They were undated and did not contain the landlord Mr Leclerq's name and address, as required by Section 48 of the 1987 Act. They were headed "Estate Court Limited". Mr Leclerq and his brother were the directors. He said that this company owned 54 Brunswick Road, which was converted into tenanted bedsitters, but that he personally owned No.53. He had put the service charge payments into the company account.
17. Even though Mr Dover had over the years made service charge payments as and when requested by the landlord, Ms Knowles submitted that he was not precluded from disputing these. Under Section 27A(2) of the 1985 Act an application to the Tribunal may be made whether or not any payment has been made. This applied to the payments made before the amended Section 27A came into force on 30 October 2003. This was because the application was made after that date, and the statute reversed the decision in *R (Daejan Properties Ltd) v London Leasehold Valuation Tribunal CA [2001]*. All maintenance years from 2001 could therefore be considered. This was accepted by the Tribunal as the correct legal position which was supported by a Lands Tribunal decision.
18. Mr Leclerq accepted that he had not produced annual accounts in accordance with the lease terms, but he had attempted to do so after being served with the Section 22 Notice. He further accepted that the accounts were not completely accurate but he said he had given some instructions to the accountants to make changes where necessary. The accounts had been prepared to the end of each accounting year. They somewhat confusingly showed 20% as being due from the basement, ground, first, second and third floors. Mr Leclerq said this was intended to apportion the expenditure between the floors, with 40% being due from the 2 leaseholders, and that he was responsible for the remaining 60% as freeholder.
19. Mr Leclerq was not familiar with the lease terms. There were only 2 long leaseholders in No.53 and none in No.54. He had directly managed both properties without assistance until appointing Austin Rees and thought he was acting in the best interests of the properties. In some matters, such as insurance and survey reports, he dealt with both properties together and then apportioned the costs in order to calculate the service charges (see further below on insurance costs).
20. Mr Leclerq said that this relatively informal procedure had been in place for some years and had not previously been challenged by Mr Dover. His practice was to telephone or write to Mr Dover if there were repairs or management issues to discuss, such as the roof works. He did not know about the statutory consultation procedure and thought that keeping Mr Dover informed was sufficient. He sent out handwritten demands for service charges which he also thought were sufficient.
21. Mr Dover's evidence was that he purchased the flat in 1996 as an investment property for letting. Over the years he had paid service charges as he felt he had no alternative. He had tried to question some charges and had not always consented to works being done especially in relation to roof repairs. He had corresponded with Mr Leclerq but had not received satisfactory replies. Eventually in 2006 he enlisted the

help of his letting agent, Mr Harrington, who wrote many times requesting the accounts and copies of receipts but without success. He also wrote to Austin Rees when it became apparent that they may have been instructed to manage the property but they did not address any accounting queries from before they took over management. From the correspondence this appeared to be in June 2007.

22. The Tribunal considered the items challenged in the accounts as set out in a Schedule prepared by Ms Knowles. For ease of reference each year is discussed below followed by the Tribunal's determination on each item. This is subject to the Tribunal's view on the general liability point discussed in full in the Decision below.

#### Y/e 25/12/2001

##### **Fire precautions: £217.38**

23. A figure of £217.38 for fire precautions appeared in the accounts. Initially it was argued that this expenditure related to internal work to one of the bedsits but at the hearing Ms Knowles accepted that it related to a Brighton Fire Alarms Ltd invoice dated 28/05/2001 for servicing and testing emergency lighting and fire alarms.
24. The Tribunal therefore allowed this item. 20% = £43.48.

##### **Roof £12,472.60**

25. This was disputed because the invoices provided did not match the claimed expenditure, and in any event statutory consultation under Section 20 (in its previous form) did not take place. Mr Leclerq accepted that he had not followed the statutory consultation procedures nor had he applied to the County Court for dispensation. He did correspond with Mr Dover about some estimates, who was aware of the need for works, but this tailed off. There was an invoice of £11,168.95 from a John Spurling; it emerged at the hearing that this contractor had failed to complete the work so that Mr Leclerq had deducted some costs and paid another contractor for some additional works which he did not feel it was fair to pass on as service charges.
26. Because of the failure to consult, the outcome was that the amount recoverable from Mr Dover was limited to £50, under the statutory rules in force at the material time.

##### **Carpet common parts: £625**

27. There was no documentary evidence of this expenditure. Mr Leclerq said the carpet had been replaced in 2001 but the invoice could not be found and the company had ceased trading.
28. The Tribunal therefore disallowed this item.

##### **Insurance: £1,049.66**

29. Insurance was disputed for each year, as the figures in the accounts did not match the premium shown on the insurance documents. For example, the premium shown on a renewal receipt for 4 June 2001 was £1,772.36 but the expenditure in the account for 2001 was £1,772.36. The renewal receipt was confusing in that the

property was not specified it was in the name of Estate Court Limited, Director Mr P Leclerq. A handwritten note appeared reading "5/9 = £984.64" which was not self-explanatory. The premium was not disputed apart from requiring clarification; no alternative quotations were put forward.

30. Mr Leclerq explained his method of dealing with the insurance premiums. Numbers 54 and 53 Brunswick Road were jointly insured. He apportioned the premium as 5/9 because he said the accommodation was arranged over 5 floors in No.53 and 4 floors in No.54. The premium was only a starting point to which an extra cost of instalment payments was added, and approximately £60 deducted for the common ways. The handwritten note was made by his accountant in an attempt to identify the cost for No.53. At the request of the Tribunal, Mr Leclerq produced a typed version of his accountant's handwritten calculation for each year.
31. In the light of this explanation, the Tribunal found the sums in the accounts were explicable, even if the apportionment method was somewhat confusing and unorthodox. On balance the Tribunal accepted that the property was adequately insured and that the sums charged for each year were not unreasonable. The amount of £1,049.66 was therefore allowed, as were the insurance premiums for the remaining years in issue (see below). 20% = £209.93.

#### **Accountancy £235**

32. This amount was claimed in all the accounts, then £293.75 in 2006. A further figure of £587.50 appeared in one set of composite accounts apparently produced on 21/04/2006. The sums were challenged as unreasonable on 3 main grounds: first, there was no invoice to confirm the amounts; second, there were discrepancies and inaccuracies in the accounts; and third, the certification was inadequate. Ms Knowles submitted that under the terms of the lease Mr Dover was only required to contribute to accountancy costs where the accounts were properly certified.
33. Mr Leclerq said that the amount should be £117.50 each year. £587.50 was charged in 2006 for producing a composite account. He asked the accountants to break this down to an annual figure. The sum of £235 was incurred in relation to 53 & 54 Brunswick Road. He had instructed accountants when put under pressure to produce accounts in 2006. He could not explain the arithmetical discrepancy or produce any invoice in support of the accountancy fees.
34. The Tribunal regarded Mr Leclerq's explanation as inadequate. It was clear that there were significant problems with the accounts, More than one version had been produced, and there were discrepancies and inaccuracies. The accounts purported to be certified but with the rider "prepared from documentation and explanations provided to us but without audit or verification thereof". This was wholly unsatisfactory as none of the information could be relied upon. The Tribunal would expect a proper certification to state that the accounts are a true and accurate statement of the service charges and landlord's expenditure. The Tribunal therefore decided that none of the accountancy fees for any years were recoverable.

#### **Y/e 25/12/2002**

**Fire Precautions: £403.99**

35. The expenditure claimed in the accounts was £403.99 but the invoices provided did not add up to this amount. Mr Leclerq did not know why this figure appeared as he accepted the invoices only supported £350.74 and he said he had ordered his accountants to rectify this.

36. The Tribunal allowed £350.74. 20% = £70.15.

**Painting: £6,800**

37. There was an invoice from C&P for £6,800 for decoration, scaffolding and repair to the front and rear external elevations. Again Mr Leclerq had failed to consult and there was no specific correspondence. He said he had consulted informally by letter and telephone but accepted he had not followed the statutory procedure.

38. As before the amount recoverable from Mr Dover was therefore limited to £50.

**Survey Fees: £213.08**

39. Mr Leclerq produced 2 invoices from J Green Associates dated 07/03/2002 for £164.97 and 05/09/2002 for £293.75. The text showed that inspection work had been carried out at 53 and 54 Brunswick Road. Mr Leclerq explained that he owned both properties and for some matters dealt with them together. A handwritten note on the invoices "split 50:50" was made by his accountant on his instruction to split the cost between the 2 buildings, hence the figure of £213.08 appearing in the accounts.

40. The Tribunal accepted that this expenditure was justified and that the 50:50 split, was not unreasonable in the circumstances. It allowed £213.08. 20% = £42.62

**Legal fees: £146.87**

41. There was an invoice from Dean Wilson Laing dated 05/09/2002 for £146.87 but no details as to what the advice was for. Mr Leclerq denied that it related to the tenanted bedsitter units but said that he had sought advice on whether he could take any action against the builder who had failed to complete the roof works.

42. The Tribunal disallowed this item as it was legal advice on possible legal action against a contractor and was not a service charge item within the terms of the lease.

**Insurance: £1,232.82 allowed. 20% = £246.56**

**Accountancy: £235 disallowed**

**Y/e 25/12/2003**

**Fire Precautions: £432.99**

43. The accounts were confusing. Expenditure of £432.99 was claimed but Ms Knowles could only find invoices from Brighton Fire Alarms adding up to £323.13. Mr Leclerq could not explain the figure in the accounts.



44. The Tribunal allowed £323.13 as the only figure supported by documentation. 20% = £64.63.

**Insurance: £1,420.56 allowed. 20% = £284.11**

**Accountancy: £235 disallowed**

**Y/e 25/12/2004**

**Fire Precautions: £250.28**

45. The sum of £250.28 was supported by invoices and agreed. 20% = £50.06

**Window replacement £525; Pipe repair £150**

46. Mr Leclerq accepted that the cost of works to windows was not a service charge item and that he could not find an invoice for the pipe repair. These items were therefore removed by consent.

**Insurance: £1,600.52 allowed. 20% = £320.10**

**Accountancy: £235 disallowed**

**Y/e 25/12/2005**

**Fire Precautions: £244.40**

47. The figures in the accounts were incorrect in that the invoices scrutinised at the hearing supported expenditure for this period of £307.32. 2 further invoices for £148.05 and £70.50 were disallowed as the works were inside other flats.

48. The Tribunal allowed £307.32. 20% = £61.46.

**Roof repairs: £250**

49. Mr Leclerq thought this related to replacement slates but had no invoice.

50. The Tribunal disallowed this item.

**Electrical rewiring: £1,310**

51. There was an invoice from LH Electrical. The work was required following the intervention of Brighton & Hove City Council. It was contended this work may have related to individual flats or to No.54 as the "job address" was not specified. Even if the whole sum was a service charge item, statutory consultation should have been carried out in view of the cost, as Mr Dover's 20% contribution would be over £250.

52. The Tribunal accepted that this work was carried out but the recoverable amount was limited to £250, the limit in force at the material time (i.e. after the amendments made by the Commonhold & Reform Act 2002).

**Cleaning: £500**

53. Mr Leclerq said he paid £10 per week for cleaning (which would equate to £520) but accepted he could not produce an invoice. He agreed to remove this item.

**Cleaning gutter: £200; Painting Hall: £350**

54. Invoices were provided. Ms Knowles contended the costs were excessive. Mr Leclerq disagreed as the rear downpipes were cleared from top to bottom. The common parts work included some re-plastering.

55. On balance the Tribunal allowed £550 for these items which were documented and not unreasonably incurred. 20% = £110.

**Insurance: £959.42 allowed. 20% = £191.88**

**Accountancy: £235 disallowed**

**Y/e 25/12/2006**

**Fire precautions: £276.13 agreed sum. 20% = £55.23**

**Fire escape: £829.08 agreed sum. 20% = £165.82**

**Parapet: £750; Fire escape: £480**

56. The fire escape item was agreed. Ms Knowles argued that the parapet work invoice was undated and the work done had not resolved the problem. 20% = £96.

57. On balance the Tribunal accepted that the parapet work had been carried out, that the amount was not unreasonable, and allowed this item. 20% = £150.

**Survey fees; £287.64**

58. The Tribunal accepted that these professional fees supported by 2 invoices of £69.56 and £218.08 from J Green Associates were payable and that half the costs should be apportioned to No. 53. It allowed £143.82. 20% = £28.76.

**Insurance: £789.89 allowed. 20% = £157.98**

**Accountancy: £293.75 disallowed**

**Decision**

59. The Tribunal first considered the overall liability to pay service charges. It accepted Ms Knowles' argument that as a matter of law, service charges were not payable unless they were validly demanded in accordance with the terms of the lease.

60. It was clear that in the circumstances outlined above Mr Leclerq had failed to issue interim service charge demands twice yearly on account in accordance with the lease. He had also failed to provide properly certified accounts as soon as practicable after 25 December each year, as required by the lease. The accounts produced in 2006, purporting to cover a 5 year period, were inadequate. The accounts produced in August 2008, purporting to cover each year end, were equally unsatisfactory for all the reasons explained above.

61. It appeared to the Tribunal that Mr Leclerq appeared woefully ignorant of his contractual obligations as landlord under the lease and by statute. He only instructed accountants after the persistent endeavours of both Mr Dover and Mr Harrington and after service of a Section 22 Notice (to appoint a manager). He had delayed in providing information about major works, and judging from the missing invoices, his record keeping left a lot to be desired.
62. The Tribunal was therefore bound to conclude, as a result of these legal defects, that as a matter of law, the service charges for the years 2001 to 2006 were not payable by Mr Dover. This was notwithstanding the fact that he had made some payments over the years.
63. The Tribunal appreciates that this conclusion, though legally correct and indeed inevitable, may seem unfair to Mr Leclerq, given that he has incurred expenditure at the property, albeit not all supported at present by documentary evidence. Some confusion has doubtless arisen as a result of his somewhat haphazard management of 53 and 54 Brunswick Road together, and his failure to properly differentiate between expenditure on each property. It would only be possible, in the Tribunal's view, to rectify the position by producing properly certified accounts, albeit very late; if this is not possible, because of the lack of documentation Mr Dover will not be legally liable to make payment of any service charges.
64. However, in order to assist the parties (for example in any settlement they may wish to make and to take matters forward under new management) the Tribunal has, as set out above, examined all items of expenditure and determined what would be payable as Mr Dover's 20% share, if the service charges were to be properly demanded. In this exercise it was assisted by Ms Knowles' forensic analysis of the account and invoices, and Mr Leclerq's concessions in relation to some items which could not be evidenced.

### Determination

65. No service charges are legally payable by Mr. Dover for the accounting years ending 25 December 2001, 2002, 2003, 2004, 2005 & 2006.
66. If the service charges were to become payable, Mr. Dover's liability would be as follows:

2001:	£303.41
2002:	£409.33
2003:	£348.74
2004:	£370.16
2005:	£613.34
2006:	<u>£653.79</u>
Total:	£2,698.77

**Section 20C**

67. Mr Dover made an application under Section 20C of the 1985 Act for an order that any costs incurred by the landlord in connection with these proceedings should not be regarded as relevant costs to be included in any future service charges payable by him. At the hearing Mr Leclerq confirmed that he had not incurred any professional costs and did not therefore intend to charge any costs to the service charge account. Accordingly it was not necessary for the Tribunal to make an order under Section 20C.

**Dated 22 December 2008**

**Signed**  
**Ms J A Talbot**  
**Chairman**

**Southern Rent Assessment Panel and Leasehold Valuation Tribunal**

**Case No. CHI/00ML/LIS/2008/0017**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
SECTION 24 of the LANDORD AND TENANT ACT 1987**

**Property:** 53 Brunswick Road Hove BN3 1DH

**Applicants:** Mr M Dover (tenant)

**Respondent:** Mr P Leclerq (landlord)

**Appearances:** For the Applicant:  
Ms M Knowles, Solicitor  
Of Osler Donegan Taylor

For the Respondent:  
Mr P Leclerq (08/09/2008)  
Mr M Leclerq (17/11/2008)

**Date of Application:** 25 March 2008

**Pre-Trial Review:** 30 April 2008

**Hearings:** 08 September 2008  
17 November 2008

**Decision:** 15 January 2009

**Members of the Leasehold Valuation Tribunal**

Ms J A Talbot MA  
Mr R A Wilkey FRICS  
Mrs J K Morris

Ref: CHI/00M/LIS/2008/0017

Property: 53 Brunswick Road, Hove, East Sussex BN3 1DH

### Application

1. These were 2 Applications made on 25 March 2008 by Mr Dover, tenant of the Ground Floor Flat 53 Brunswick Road Hove BN3 1DH: (1) pursuant to Sections 27A & 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination on the payability of service charges for the years ending 25 December 2001, 2002, 2003, 2004, 2005 and 2006; (2) pursuant to Section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") for an appointment of manager order.

### Background

2. An oral Pre-Trial Review was held in Hove on 30 April 2008 and Directions were issued on 02 May 2008 that both the applications would be heard together. Mr Leclercq, the Respondent, was directed to produce a Statement in reply and this was prepared by Ms C Whiteman, solicitor of Dean Wilson Laing but he was not represented at the hearing. A further Statement and documentation was produced for Mr Dover by Ms Knowles.
3. The decision in relation to the Section 27A service charge matter was issued on 22 December 2008. This decision concerns the Section 24 application for the appointment of a manager, and should be read in conjunction with the other decision.

### Jurisdiction

#### **Section 24 of the 1987 Act**

*Appointment of a manager by the court*

*(1) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely-*

*(a) where the tribunal is satisfied-*

- (i) that the landlord is either in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the property in question or any part of them or (in the case of an obligation dependent upon notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give the appropriate notice, and*
- (ii) that it is just and convenient to make the order in all the circumstances of the case; or*

*(ab) where the tribunal is satisfied-*

- (i) that unreasonable service charges have been made, or are proposed or likely to be made, and*
- (ii) that it is just and convenient to make the order in all the circumstances of the case; or*

*(ac) where the tribunal is satisfied-*

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

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

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

### **Hearing**

4. The appointment of manager application was dealt with at the reconvened hearing on 17 November 2008. Unfortunately between the 2 hearings Mr P Leclerq had undergone surgery and was unable to attend. He was represented by his brother Mr M Leclerq who was dealing with his property matters.
5. At the hearing Mr M Leclerq confirmed that he had his brother's authority to act. Unfortunately despite some last minute negotiations and the opportunity for discussion outside the hearing, no agreement was reached.
6. The tribunal announced its decision at the hearing in order to assist the parties. The decision was that it was not just and convenient in all the circumstances for the tribunal to appoint a manager. A few days after the hearing Mr Leclerq informed the tribunal office that the parties had reached agreement on the future management of the property.
7. In his application Mr Dover proposed Mr Gary Pickard of Jacksons as a manager and he attended the hearing. His case for appointing Mr Pickard was presented by Ms Knowles at the hearing, and set out in his Statement of Case dated 25/04/2008 and his Witness Statement dated 26 August 2008.
8. A Notice under Section 22 of the 1987 Act was served on 16 May 2007. The grounds were set out in Schedule 3 and the steps required to remedy those matters in Schedule 4. Essentially Mr Dover's case was that Mr Leclerq had failed to manage the property adequately and he was required to manage in accordance with the RICS Code or appoint a manager. Mr Leclerq's case in brief was that he had attempted to undertake all the required steps and had appointed Austin Rees to manage the property.
9. The tribunal heard evidence on all the grounds in Schedule 3. Item (a) was that the property was in serious disrepair over a long period, with damp affecting the ground floor flat. Mr Dover relied on a surveyor's report by Mr D Aspey of Sussex Surveyors dated 12 September 2008 which reported penetrating dampness, cracking to the exterior, defective guttering, rendering and decorations to the rear elevations and interior water damage to the ground floor flat. There had also been a series of internal leaks from the flat above, which Mr Harrington had reported to Mr Leclerq and Austin Rees over a 7 month period but which had not been properly attended to. Therefore it was submitted that the landlord was in breach of his repairing obligations under the lease.
10. Mr P Leclerq, at the first hearing, claimed that he had kept the property in repair and responded to complaints about the leaks. At the second hearing, from the evidence of Mr D Wheeler, it became apparent from that Austin Rees had been appointed in May 2007, having initially been approached in December 2006, but according to Mr Wheeler, due to a combination of lack of instructions and funding, they were not able to inspect and report on the property until May 2008. An initial consultation Notice under Section 20 of the 1985 Act was subsequently served in June 2008 and it was intended to raise service charge demands in December 2008 and then carry out necessary repairs.
11. Items (b), (c), (d), (e), (f), (g) and (h) of Schedule 3 concerned failures to provide a summary of insurance cover, to provide service charge accounts for the previous 6

years, to comply with the statutory consultation requirements and requests for information, to provide copies of vouchers and receipts, or details of moneys held on trust in the reserve fund. These matters were dealt with in the linked Section 27A decision referred to above.

12. Item (i) was that the landlord had failed to appoint a Managing Agent to manage the property, despite reasonable requests and promises to do so. The remedy sought was to appoint a suitably qualified and experienced manager. Mr Dover's concern at that stage was that unless an independent manager and previously uninvolved manager was appointed the ongoing problems at the property would remain unresolved. He argued that generally the situation had not improved since Austin Rees took over management.
13. Mr Harrington had pursued this matter on Mr Dover's behalf from June 2006. It appeared from the correspondence that although Mr P Leclerq indicated he had appointed a manager in November 2006, the position remained unclear. At the hearing, Mr Wheeler admitted that no contract had been entered into between Austin Rees and Mr Leclerq, and there was no evidence as to terms of their appointment. The lessees had been informed by letter in May 2007. He accepted that it was good practice to have a management contract and that there had been delays in attending to some matters. Errors had been made, such as sending correspondence to an incorrect address and failing to respond to queries. In relation to the reserve fund, Mr Wheeler confirmed that service charge funds for the property were now held in a separate designated account by his firm and this matter was no longer being pursued by Mr Dover.
14. Mr M Lerclerq was nor personally involved with the property at the material time and was not in a position to respond in detail to these points. His brother at the first hearing said that he felt he had complied with the Section 22 Notice by appointing a manager, by getting accounts prepared and providing copies of invoices and receipts. Mr M Leclerq gave his personal assurance that he would oversee the management of 53 Brunswick Road for the foreseeable future with Austin Rees as managing agents, if a manager was not appointed by the LVT, and that a management contract would be entered into.
15. In reply to questions from the tribunal, Ms Knowles confirmed that she was seeking and order for a manager and receiver, which she accepted would mean the manager being responsible not only for managing the leasehold interests and property maintenance, but also the bedsitting units on the upper floors. The manager would therefore have to grant assured shorthold tenancies, collect the rents and deal with those tenants. At present, Mr P Lerclerq dealt with those tenancies and Mr M Leclerq confirmed his brother would strongly oppose losing control of that aspect.
16. Finally Ms Knowles submitted that it would be just and convenient in all the circumstances for the tribunal to appoint a manager despite the steps that had been taken by Mr P Leclerq since May 2007, because of the breakdown of trust and confidence, and because no improvements had been seen at the property, especially in the area of necessary repairs. Mr M Leclerq accepted that from what he had heard there were problems that needed to be resolved, but notwithstanding the delays that had occurred he submitted Austin Rees were in place, they had not mismanaged the property, and he was able and willing to take the matter forward more pro-actively.

### **Decision**

17. The tribunal first considered whether the grounds in Schedule 3 of the Notice had been made out. There was no doubt that the property was in disrepair, and this was evident from the tribunal's own inspection and the survey reports. No major works had been carried out by Mr P Leclerq, apart from some roof works, though they were clearly



necessary. The property was still affected by damp, cracks and defective rendering and poor exterior decorations. Austin Rees had not yet dealt with these repairs though they had inspected and served consultation notices. The delays were largely due to Mr P Leclerq's failure to give instructions or guarantee funding; clearly he had failed to manage the property effectively. Notwithstanding these findings, the tribunal accepted that Mr M Leclerq did genuinely intend to become involved and take personal responsibility for management and instructing Austin Rees for the foreseeable future.

18. Regarding insurance, service charges and accounts matters, the tribunal accepted that the property was insured and noted that in response to the application Mr P Leclerq had provided a copy of one insurance schedule for 2006/07. However, the tenants had a statutory right to information regarding insurance and Mr Leclerq had failed to respond promptly or adequately to a reasonable request.
19. As the service charge decision shows, the tribunal had no doubt that Mr Leclerq had not issued service charge demands in accordance with the lease terms. He had only produced accounts and sent copies of vouchers and receipts when put under considerable pressure to do so, and the tribunal had significant concerns about the accuracy of those accounts, as explained in detail in the linked Section 27A decision. It is not known whether the defects in those accounts are capable of remedy. However, the tribunal accepted that Austin Rees were now sending demands in accordance with the lease and that the next demand was due in December 2008, and that as professional managing agents they were aware of the requirement to serve annual accounts.
20. On consultation, Mr P Leclerq admitted that he had failed to carry out the statutory consultation procedure and the Section 27A decision reflects this. The tribunal noted that Austin Rees have in 2008 sent out consultation notices under Section 20 of the 1985 Act having produced a survey report and specification of works. They have also ensured that the reserve fund is held in a separate account.
21. The tribunal therefore was satisfied that some of the statutory grounds for appointing a manager, under Section 24 of the 1987 Act, were made out, specifically that there were breaches of repairing obligations, unreasonable service charges, and a failure by Mr P Leclerq to manage the property in accordance with the RICS Code.
22. However, the tribunal also had to be satisfied that it was just and convenient in all the circumstances of the case for an order to be made. There were several unusual features in this case which meant that in the tribunal's view, on balance, it was not just and convenient to do so. It gave weight to the fact that Mr P Leclerq had taken steps to address the problems identified at the property and had attempted to comply with the Section 22 Notice. In particular he had appointed Austin Rees as managing agents. They had perhaps not performed so far as well as they could, but this was largely due to Mr P Leclerq's failure to give instructions.
23. By the date of the hearing, therefore, it appeared to the tribunal overall that the property was being adequately managed, and that there was a reasonable prospect of necessary works being carried out. On balance, it would in the tribunal's view, be more disruptive for management to be handed over to a different manager, albeit one appointed by the tribunal. Mr M Leclerq had given his assurance that he would be involved, would be responsible for instructing Austin Rees for the foreseeable future and would enter into a written management contract with that firm. From what he said at the hearing the tribunal was prepared to accept that he had some insight into the problems of the past, and a positive attitude to improving the future management of the property.

24. The final factor to which the tribunal had regard was the fact that only 2 of the flats in the property were let on long leases. The lessee of the basement flat had taken no part in the proceedings. Mr P Leclerq was the direct owner and landlord of the bedsitters. In all the circumstances, the tribunal did not consider it either just or practicable for an LVT appointed manager to administer a property where 60% of the building was occupied by assured shorthold tenants.
25. Overall, therefore, for all the reasons explained above, the tribunal did not make an order for the appointment of a manager.

### **Section 20C**

5. Mr Dover made an application under Section 20C of the 1985 Act for an order that any costs incurred by the landlord in connection with these proceedings should not be regarded as relevant costs to be included in any future service charges payable by him. At the hearing Mr Leclerq confirmed that he had not incurred any professional costs and did not therefore intend to charge any costs to the service charge account. Accordingly it was not necessary for the Tribunal to make an order under Section 20C.

**Dated 15<sup>th</sup> January 2009**

**Signed  
Ms J A Talbot  
Chairman**