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

**Case Reference** : **CHI/00HB/LAM/2013/0014**

**Property** : **The Waterfront, 30 Hotwell Road,  
Bristol, BS8 4UU**

**Applicant** : **Mr Alex Martin**

**Representative** : **In Person**

**Respondent** : **The Waterfront (Freehold) Limited**

**Representative** : **Mr M Brown (Counsel) instructed by  
Charles Russell Solicitors**

**Type of Application** : **Appointment of Manager  
Section 24 Landlord and Tenant Act  
1987**

**Tribunal Members** : **Judge D Archer (Chairman)  
Mr M Ayres (Chartered Surveyor)  
Mr S Fitton (Lay Member)**

**Date and Venue of Hearing** : **17 October 2013 at the Victoria  
Square Hotel, Clifton, Bristol**

**Date of Decision** : **9 December 2013**

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## DECISION

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**1. For the reasons set out below, the Tribunal makes a determination that it is not just and convenient to make an order to appoint a manager under Section 24 of the Landlord and Tenant Act 1987. There are no other grounds to make such an order at present.**

**2. For the reasons set out below, the Tribunal makes an order under Section 20C of the Landlord and Tenant Act 1985 that all of the costs incurred by the respondent in the current proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants at The Waterfront.**

## REASONS

### Background

1. The applicant is the leasehold owner of Flat 2, The Waterfront. The respondent company is the freehold owner of The Waterfront ("the property"). The applicant purchased the leasehold to his flat and moved in during April 2005. The building was developed by Tivoli Developments Ltd and is comprised of four flats on four floors. The applicant's flat is on the first floor and Tivoli Developments Ltd is the leaseholder owner of the flats on the second and third floors (Flats 3 and 4). Mr Simon Steele and Mrs Amy Steele are the leasehold owners of Flat 1 on the ground floor. The directors of the respondent company are Mr Simon Spencer and Mrs Margaret Spencer. They are also the directors of Tivoli Developments Ltd. Until 2008, the managing agents were a firm called Grovewood but then Tivoli Developments Ltd took over the role.
2. The current application was made on 22 July 2013. The applicant complains that the respondent company has failed to maintain the property to an adequate standard and had disregarded the evident signs of problems requiring maintenance or investigation. Basic information such as yearly summaries of accounts have been up to five years late and requests for additional information have been delayed, refused or ignored. In the past year the applicant states that he has made renewed efforts to resolve issues with Mrs Spencer but the respondent has still failed to act more professionally. His request for arbitration has been ignored. The Section 22 notice has caused an upswing in activity; however 12 of the 17 remedies requested by the applicant have not been addressed satisfactorily.
3. The applicant's concerns relate to unequal treatment of leaseholders in that Tivoli Developments Ltd has

been treated more favourably than the other leaseholders, lack of transparency in payments by Tivoli Developments as leaseholders and the absence of a separate bank account for the respondent company until 2012, poor record keeping and administration, lack of communication (no response to letters and e-mails for up to three years), poor quality of maintenance (ongoing issues caused by water ingress ignored for six to eight years, sporadic cleaning of communal areas, maintenance of communal areas neglected for over six years and then undertaken to a poor standard at the end of 2012) and unreasonable behaviour (refusing to allow basic repairs to the front door keypad entry in 2011 unless the applicant paid the full cost, doubling the management fees retrospectively at the end of 2012, recently sending out a bill for £1075 with only one working day to pay, passing arrears onto a debt collection agency and then going abroad).

4. The applicant further states that in November 2012 the respondent company agreed to take on an independent managing agent and asked the applicant to interview managing agents to draw up a shortlist. Within weeks the communal areas were hastily redecorated and the applicant was billed for the work and the upcoming year. After the applicant had interviewed and drawn up a shortlist the respondent company denied ever agreeing to appoint a manager.
5. Mrs Spencer for the respondent company has produced a document entitled "Opening Statement" confirming her role as director of the respondent company and Tivoli Developments Ltd. The respondent company does not oppose the appointment of a good and professional managing agent but the level and frequency of service charge arrears has made this approach and the handover to a new managing agent difficult. By the end of April 2013 the service charge account was largely up to date and solicitors wrote to the applicant on 10 June 2013 confirming that contact would be made with the suggested managing agents and a further response would be provided no later than 31 July 2013. The applicant proceeded with the application to the Tribunal. A new managing agent, Crown Leasehold Management ("Crown LM"), was appointed on 16 August 2013 with a start date of 3 September 2013.
6. Mrs Spencer states that Crown Leasehold Management Ltd ("Crown LM") should not be removed without good reasons. She goes on to address the historic matters. Grovewood were initially satisfactory but negative issues emerged at the end of 2007 and they were dismissed after investigation. Tivoli Developments Ltd did not send out timely accounting information to the leaseholders until 2011 and omitted to send out the service charges rights and obligations document. However, all bills were paid and accounted for and they were always contactable. From 2011 accounts have been produced and distributed in a timely manner. A full and final settlement in relation to service charges up to 31 November 2011 was reached at a meeting on 12 November 2012. There was no separate management

account until 2012 because Tivoli Developments Ltd was often simply paying all of the bills. The other allegations made by the applicant are not accepted. A surveyor has found the building to be well maintained and verified the accounts (report from Mr Philip Furze; a Chartered Valuation Surveyor of Davies and Way dated 15 May 2013; "the surveyor's report").

## The Law

7. Section 24 of the Landlord and Tenant Act 1987 gives the Tribunal power to appoint a manager to carry out management functions in relation to the property where the landlord is in breach of an obligation owed to the tenant, where unreasonable service charges have been made or are likely to be made, where the landlord has failed to comply with any relevant provision of the relevant RICS Codes of Practice, where unreasonable variable administration charges have been made or are likely to be made, where the company managing the property no longer wishes to manage it or where other justifying circumstances exist. All of the grounds are subject to the qualification that it is just and convenient to make the order in all of the circumstances of the case.
8. Section 20C of the Landlord and Tenant Act 1985 permits a tenant to make an application for an order that all or any of the costs incurred by the landlord in connection with proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by the tenant or any other person. The Tribunal may make such order on the application as it considers just and equitable in the circumstances.

## The Lease

9. The Tribunal had before it a copy of the leases for the property including a lease dated 29 April 2005 between the applicant and the respondent company. The Landlord's Covenants include a requirement to maintain, decorate, repair and renew the communal areas (6.1.3), provide for the lighting of and keep reasonably clean the entrance hall landings and staircases of the property (6.1.5), paint the exterior parts of the building as are usually painted with not less than two coats of good quality paint as often as the landlord thinks fit (6.1.3) and to supply to the tenant **not less frequently than once in every calendar year** a summary of the service expenses for the previous calendar year.
10. The detailed provisions of the lease in relation to Service Expenses appear at Schedule 4 of the lease and there is a prohibition on the erection of external wireless or television aerials at paragraph 6 of Schedule 1 of the lease.

## Inspection

11. The Tribunal inspected the property internally and externally on 17 October 2013. The property comprises

four flats over four floors. We examined the standard of decoration in the communal areas. The paintwork has been patched but is not of poor quality. On the ground floor, the carpet was reasonably clean but there was a paint trace in the carpet. A damp area had been covered over. The carpet was not cleaned to the edge and old paint was visible. On the second floor there was a small damp area that had been recently painted over. A further damp area on the third floor had been painted over. There were no signs of current damp issues.

12. We noted that there were signs of previous leaking from the guttering at the rear of the property but no current issues. The guttering has been recently cleaned. There was hairline cracking to the external rendering together with some discolouration and flaking but no reason to doubt the surveyor's report produced by the respondent. The rendering remains sound. The key entry system is the only method of entry and that is being repaired now. There were two external satellite dishes.

### **The Hearing**

13. The hearing took place at the Best Western Victoria Square Hotel in Bristol on 17 October 2013. Neither party had submitted any witness statements and the Tribunal declined to hear any oral evidence. After an adjournment in order for the parties to seek to reach a settlement the hearing proceeded on the basis of oral evidence from Mr Nathan Hockenhull of Crown LM, Mr Joe Goss of Hillcrest Estate Management ("Hillcrest") and submissions from both parties.

### **The Evidence**

14. The evidence submitted by the Applicant on 24 September 2013 included the following;
- 1) The applicant's comment upon Mrs Spencer's opening statement.
  - 2) Mr and Mrs Steele's response to Mrs Spencer's opening statement.
  - 3) Photographs of the property.
  - 4) Accounts from the period 2005-2011.
  - 5) Individual documents and correspondence for each year from 2005 to 2013.
  - 6) Copy invoices.
  - 7) Bank statements

8) Grovewood Accounts.

9) A statement of competence and other documents from Hillcrest dated 17 September 2013

At the hearing, Mr Brown submitted a 347 page bundle on behalf of the respondent company including the application, response packs from the applicant and Mrs Spencer, correspondence with the Tribunal, correspondence with the applicant, a further response to the applicant's third schedule and confirmation e-mails and statements.

### **The Submissions**

15. Mr Martin submitted that the past history is important. Tivoli Developments Ltd has repeatedly underpaid their due contribution to the service charge. There was an underpayment of £1600 in 2005 and then £1600 in 2008 and £1200 in 2009. There have been no accounts, no information and letters ignored. Mr Martin was concerned that this will happen again and Mrs Spencer will not pursue her company. There have been no service charge accounts for 5 years. We need transparency of accounts. Tivoli Developments Ltd has never detailed how much money they have contributed.
16. Mr Martin stated that he had requested to view the receipts for 2012 but many letters have been ignored. He has still got nowhere and suspects that the information will not be passed on to the new managing agent. Mr Martin expressed concern over Mrs Spencer's behaviour over the last couple of months. He was given just one day in 2013 to pay a £1000 bill. He took off the cost of the carpet cleaning and paid the bill. Mrs Spencer immediately engaged a debt collection company. The lack of communication is extremely difficult and it is stressful dealing with Mrs Spencer. There have been threats to forfeit his lease.
17. Mr Martin submitted that if Mrs Spencer really had the best interests of the building at heart then she would have spent the money on the building rather than a barrister. He wants the building to be looked after professionally. The hearing could easily have been stopped if Mrs Spencer had produced bank statements and receipts.
18. Mr Brown submitted that there is now an independent managing agent in place. There has been non-payment of service charges. Mr Martin has exaggerated things out of all proportion. Grovewood made many payments out but after that Tivoli Developments Ltd paid due sums up front in consideration of service charges. Page 198 onwards of the respondent's bundle lists contractors who were paid direct from the service charge account between 2004 and 2008. There was one payment to the insurance broker and only seven payments out to contractors. Clearly, not all contractors were being paid from the service charge account. The expenses incurred by Tivoli Developments Ltd

appear at page 125; it is not correct that no service charges were paid and there is no real concern. The fault was with Grovewood.

19. Issues continued after Tivoli Developments Ltd took over management responsibility. The 2012 Waterfront expenditure appears at page 46. The service charge for apartment 2 was not up to date until February 2012. Bills were still incurred and were being paid by Tivoli Developments Ltd. Mr Brown accepted that annual summaries were late. Mrs Spencer was diagnosed with cancer and payments to contractors were not broken down into separate years. Tivoli Developments Ltd started again in 2011 and Mr Martin was provided with invoices in November 2012. Full and final settlement was reached at that point.
20. The surveyor's report provides an analysis of the accounts at page 52. The expenditure in respect of painting and carpeting was good value for money. The quality of maintenance is set out in the report. There may be slight issues but the property is generally well maintained. The damp patch was caused by a protruding roof but is now resolved. The rendering is secure and not hollow sounding. The building is generally well maintained. Contact numbers were provided to the leaseholders and messages were appropriately prioritised.
21. Crown LM are independent and have proposed a much higher budget than the current budget. No issues have been raised about their management. They are in for the long term and cannot be dismissed until the end of 2014. Appointing a manager must be a last resort and it is in the best interests of the leaseholders to continue with the current arrangements.
22. In relation to Section 20C; today's hearing could have been avoided. The process of appointing agents commenced in June 2013. Costs should follow even if the application to appoint a manager is granted. No order should be made under Section 20C if the application is dismissed – the application should never have been brought.
23. Mr Martin then responded to Mr Brown's submissions. There was agreement with the managing agent at the time to pay the bills. The building was not insured for 6 months – there is a 6 month gap in the insurance certificates. He first knew about Tivoli Developments Ltd paying the bills outside the managing agents in 2008. It is a scrappy list of things and there were no proper accounts. Mr Martin finished 2006-2006 in credit and again in 2008. There were no summaries of accounts and he was as fair as he could be. Tivoli Developments Ltd wanted the other leaseholders to pay the bills but did not maintain the building correctly. He first refused to pay in 2011 but even that year only ended up £12 in arrears. He is very wary of the same situation happening again.

24. The service charge accounts were recently recreated by Mrs Spencer. That is not good accounting practice. The work done at the end of 2012 was not to a good standard. The carpet cleaners even had to work in the dark. There has been a damp patch since 2005. The flat was sold to Mr Martin as architect approved. The problem with the roof should have been identified at that point. Crown Management as managing agents would be perfectly OK but they have no leverage with Tivoli Developments Ltd. Communication was not OK – Mr Martin sent 6 letters and 3 went unanswered.

### Oral Evidence

25. Mr Goss appeared for the applicant and adopted his statement of competence dated 17 September 2013. Hillcrest has over 4000 units in management. Mr Goss has visited the property on two occasions including the communal areas, lift and front and rear elevations. The most recent visit was on Friday 13 September with a contractor who carried out a goodwill cherry picker inspection of the roof and rainwater goods. That showed full and partially full gutters and Hillcrest would wish to carry out a thorough clear of rainwater goods as funds allow. Hillcrest is based 1.5 miles from the property. The proposed first year management fee is £1,600 plus VAT. There are additional charges for some services. The service covers full book keeping, company secretarial and property management service including arranging AGMs, taking minutes, agreeing action points and placing the buildings insurance. The property will be inspected at least quarterly to include taking meter readings for communal utility services, inspecting cleanliness, checking overall condition and reporting to leaseholders/freeholder as necessary, monitoring payment of service charges, administering an arrears chasing service and being able to supply such information as funds held on account and advice on building insurance claims.
26. The proposed service charge budget is for a total of £12,577 and includes £1920 for management fees, £500 for general repairs, £500 for gutter clearance and inspections, £500 for life insurance including an engineering inspection, £400 for lift maintenance, £504 for cleaning, £440 for communal electricity, £300 for electrical installation, £400 for risk assessments and insurance revaluation, £750 for building consultancy and a £4000 reserve. The reserve would need to be built up to at least £8000 by spring 2016 with a view to covering the potential cost of render repairs and the usual 4-5 year cycles for external repair and 5-7 years for internal decoration. Mr Goss said that the management fee takes into account the history and complications. The usual fee would be £200 per unit but there are significant complications in this property. He would seek to review the figure downwards in future years. The charge for gutter clearance is based on the cost of a cherry picker, cleaning is £35 per month plus VAT, building consultancy covers the cost of an independent surveyor to review the property. Mr Goss agreed that the surveyor's report could obviate the need for further building consultancy, if everyone was happy. He had not



previously seen the surveyor's report. Mr Goss also agreed that the insurance revaluation might not be necessary in the first year; the current sum insured may be a little low but is not far out. It is good practice to conduct a revaluation every 3 years.

27. Mr Hockenhull appeared for the respondent company and adopted the letter from Mrs Spencer of 13 September 2013 plus the contract between the respondent company and Crown LM dated 16 August 2013 and the Overview and Working Practices of Crown LM document (pages 215 to 225 of the respondent's bundle). The management fee is £1000 plus VAT. The contract includes provisions relating to service charges (set up and maintain efficient records, provide the client with schedules, take action to retrieve arrears, arrange for the provision of and supervise the services required by the client, order and supervise maintenance and repairs as irrevocable agents up to £500 per item of recoverable expenditure), staff and security, general issues (review the management policy for the building, inspect the building and grounds, carry out the client's obligations and deal with correspondence), accounts (appoint auditors and accountants to prepare accounts and provide to the client such other financial information as may be required on a quarterly basis and keep proper accounts), insurance, secretarial (call and attend meeting of Directors on a quarterly basis, call and attend an AGM, keep minutes of the meetings, act as Company Secretary, keep all historic records as well as all new documentation and formal records generated during the period of the agreement), response levels (immediate for emergency, maximum of 3 days for a maintenance issue resulting in a general hazard and maximum of 10 days for general repairs and maintenance), charges (£83.83 monthly in advance) and termination (three months' notice period but **only after the initial period ending 31 August 2014**).

28. Mr Hochenhull said that the contract was signed on 16 August 2013. Mrs Spencer wanted a bespoke and clear agreement. Crown LM took over in the first week of September 2013. So far, they have dealt with a leak from the top flat that was caused by a washing machine. Arrangements are being made for remedial work in the lower flats to be carried out tomorrow for no additional charge. The front door lock has been fixed as a temporary repair and will be replaced this afternoon. There is a figure for gutter clearance and inspection in the budget. Mr Hochenhull then produced a Service Charge Budget for the respondent company. Mr Hochenhull said that a cherry picker has attended to have a look at the condition of the gutters and drainage and removed some of the build-up in the guttering. He did not know when the task had been last carried out.

29. Under cross examination by Mr Martin, Mr Hochenhull confirmed that Crown LM commenced on 3 September 2013. The welcome pack was sent out within 3 weeks of 3 September 2013. When asked about closing accounts from Tivoli Developments Lt, he said that he had seen some figures for 2012 but nothing for 2013. He was just dealing with day to day issues and it might take 6 weeks to get to

grips with the accounts. He had always been given figures promptly and had full details for 2012. The budget includes provision for accounts to be produced externally by a third party. Mrs Spencer understands that no one can manage the building unless everyone pays on time. Crown LM have never been dismissed at any site. They try to keep business by quality of service rather than contract. He does not wish to be perceived as the freeholder's agent. The leaseholders at the property are not unhappy about the service to date. He will be more heavily involved after the Tribunal decision. The damage caused by the washing machine leak has been claimed from the buildings insurance.

30. The Crown LM budget is for a total of £8184. That includes £1200 for management fees, £500 for general repairs, £500 maximum for gutter clearance and inspection, £200 for lift maintenance, £325 for lift insurance and inspection, £504 for cleaning, £440 for communal electricity, £250 for security, £200 for a pump service, £250 for accounts and a £2000 reserve. Mr Hockenhull stated that Mrs Spencer contacted Crown LM after looking for managing agents on the ARMA website. That was around June 2013. The Hillcrest budget includes elements not in the Crown LM budget but that is because Mr Goss is not aware of the full history and the surveyor's report. Crown LM always try to cut costs across a few buildings. Crown LM is a member of the ombudsman scheme that deals with complaints. They would want a health and safety survey to be carried out. Mrs Spencer did not want a huge increase in the service charge. Mr Hockenhull's personal view was that the reserve should be between £2000 and £3000. There is nothing in the contract to permit an increase to the management fee and he would hope that management of the site would become easier.

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## Conclusions

31. The Tribunal finds that the managing agent role has not been carried out to a satisfactory standard. That is admitted by the respondent company in relation to the compilation and provision of service charge expenditure accounts. We also find that the installation of satellite dishes is in breach of the lease. We find that the admitted breaches of the leases provide jurisdiction under Section 24 of the Landlord and Tenant Act 1987 for the Tribunal to appoint a manager subject to the requirement that it is just and convenient to make the order in all of the circumstances. It is evident from the extensive correspondence seen by us that the deficiencies in managing the property have caused significant distress and inconvenience to the leaseholders. Disputes have tended to be addressed in a manner that is unlikely to create a harmonious environment between the leaseholders and the managing agents. The early resort to a debt collection agency in July 2013 (paragraph 16 above) is a good example of a somewhat confrontational approach by Tivoli Developments Ltd. Mrs Spencer's letter of 12

September 2013 concedes that there was no reply to Mr Martin's letter of 30 June 2013 because the debt collection agency contacted Mr Martin in July 2013. We consider that it is always desirable for managing agents to respond directly and promptly to correspondence from leaseholders in the managed property.

32. We have carefully considered the surveyor's report. Mr Furze only considered the service charge expenditure accounts for 2012 and 2013. The 2013 accounts were necessarily incomplete because they were inspected on 10 May 2013. Mr Furze confirms that there are original invoices in respect of the sums shown in the annual account which accurately reflect the sums expended in maintenance in accordance with the lease requirements. However, Mr Furze did not consider any service charge expenditure accounts for the previous years. We note that the total budget for 2012 was only £3937 which is a far lower figure than the proposed budgets submitted by Hillcrest and Crown LM. Expenditure in previous years has generally been lower still, reflecting the somewhat sporadic nature of efforts to maintain the property. It is evident that the various disputes between the parties have inhibited proper maintenance of the property.
33. Mr Furze considered the expenditures in respect of the painting of the communal areas and carpeting to be judicious and representing value for money. We have no reason to disagree with that conclusion but agree with Mr Furze's additional comment that the stairs and landing carpets are showing some evidence of age and that it may be prudent to replace with a darker carpet upon renewal. The respondent company's planned maintenance schedule confirms that the carpets are to be replaced every 8-10 years. The carpets are plainly reaching the end of their useful life. We note that the e-mail from WhiteKnight Cleaning Company dated 5 February 2013 confirms that when they arrived at the property the carpet **was in a very bad state**. We find that a competent managing agent would have taken action to avoid the carpets deteriorating into a very bad state.
34. The surveyor's report also states that Mr Furze viewed the communal areas and is of the opinion that they have been well maintained. That conclusion is obviously subject to the reality that the carpets were in a very bad state before they were cleaned and his further comments in the surveyor's report regarding a damp patch on the wall of the first communal half landing and water ingress into the second floor flat. The surveyor's report noted that the managing agents **had arranged for a builder to erect a tower scaffold at the rear to carry out remedial work which should prevent water running down the wall and causing damp on the half landing. Once the damp area of plaster has dried out it will require replastering/redecoration. Remedial works in respect of the damp into the second floor flat were discussed with the builder who was instructed to proceed with the work.** We therefore find that the damp issue had not been resolved as of 15 May 2013 but when we inspected the property there was no evidence of current damp issues.

35. The surveyor's report also refers to Mr Furze inspecting the accessible render. He found it to be secure and not hollow sounding as it would be if it was losing its key. He was of the opinion that the cracking was due to aging/weathering of the surface. He concluded that the cracking was superficial but that **redecorating is overdue**. The managing agents should budget to redecorate externally every four years. We find that the surveyor's report in respect of the render is consistent with our inspection of the property and our general conclusions at paragraphs 31-32 above. An effective managing agent would have redecorated the rendering in a timely manner.
36. There is an extensive history of correspondence and meetings between the parties. We have not found it necessary to recount this history or to make findings about all of the historic issues or to seek to apportion liability for the issues that have arisen within the property. We are satisfied for the reasons set out above that there would have been good reasons to make an order under Section 24 of the Landlord and Tenant Act 1987 if that role was still being carried out by Tivoli Developments Ltd. However, the actual situation is that Crown LM took over the role of managing agent on 3 September 2013 and their contract cannot be terminated until 30 November 2014 (allowing for the three month notice period in the contract). It is therefore unlikely that Mrs Spencer will seek to dismiss Crown LM immediately after this case is concluded. In fact, all of the evidence suggests that both parties are now committed to the appointment of an independent and professional managing agent.
37. At the outset of the oral hearing, we asked Mr Martin what he wished to achieve as a result of his application. He said that he would like the property to be managed effectively. He wanted the accounts to be completed correctly and did not want to have to worry about issues all of the time.
38. We have carefully considered the relative merits of Hillcrest and Crown LM. We found both Mr Goss and Mr Hockenhull to be competent professional witnesses with a high degree of commitment to the provision of a long term professional service in compliance with the relevant standards at a reasonable price. We note that the proposed budget from Hillcrest is significantly higher than that from Crown LM but find that much of the difference is due to Crown LM having a better understanding of recent issues within the property. We also note that Mr Hockenhull would have preferred a somewhat higher reserve but Mrs Spencer was keen to avoid a sharp increase to the service charges.
39. The management fees for Hillcrest are higher than those for Crown LM but Mr Hockenhull graciously conceded in oral evidence that they might end up looking very similar over the longer term. In short, we conclude that there is little to choose between the potential managing agents although Crown LM plainly offers

somewhat better value for money fee structure in the short term. We broadly agree with Mr Brown's submission that Tribunal appointment should be a last resort. We find that the appointment of Crown LM under the contract of 16 August 2013 and the evidence of positive action by Crown LM since 3 September 2013 are sufficient for us to conclude that it is not just and convenient for the Tribunal to appoint a manager. Crown LM should be given a reasonable opportunity to perform the managing agent role. That will, of course, require the positive support of all parties. There is nothing to prevent Mr Martin from making a further application to the Tribunal, should it become necessary.

40. We have carefully considered the application made under Section 20C of the Landlord and Tenant Act 1985. We note that Crown LM was appointed after the date of the current application. We further note that the letter of 10 June 2013 from Charles Russell Solicitors to Mr Martin states that the respondent company would be meeting with the proposed managers and would respond to Mr Martin with their comments no later than 31 July 2013. The letter does not confirm or suggest a deadline for the appointment of a managing agent. The letter from Mrs Spencer to the Tribunal dated 25 September 2013 states that Mr Steele telephoned her in late July/early August 2013 and asked her to appoint a new managing agent as soon as possible. We find that the appointment of Crown LM was a result of the Section 24 application and the support given to Mr Martin's application by Mr and Mrs Steele. We find that Mr Martin had good reason to make the Section 24 application for the reasons set out above and nothing happened before the application was made to make the application unnecessary. The process of appointing a managing agent could have dragged on indefinitely. We therefore reject Mr Brown's submission that the Section 24 application should never have been brought.

41. Since the appointment of Crown LM there has been a flurry of positive activity. We have considered whether the Section 24 application might have been withdrawn and the hearing vacated, thereby avoiding the hearing costs incurred by the respondent company. We find that Mr Martin had good reason not to withdraw the Section 24 application.

42. Firstly, as late as 10 June 2013 the respondent company was making a misleading statement regarding the condition of the guttering (1.1 of the letter dated 10 June 2013 from Charles Russell Solicitors to Mr Martin). It was asserted that **the landlord has inspected the guttering and confirms that it is clear**. That is contradicted by the oral evidence given by both Mr Goss and Mr Hockenhull. We accept that Mr Martin had significant difficulties in maintaining trust and confidence in the respondent company in this context.

43. Secondly, the respondent company did not consult with the leaseholders over the selection of the managing agent. That was despite the commitment given in the letter dated 10 June

2013 from Charles Russell Solicitors that Mr Martin would be kept up to date with progress no later than 31 July 2013. Mr Hockenhill accepted in oral evidence that the Crown LM welcome packs were not sent out until about three weeks after 3 September 2013. We find that Crown LM was appointed without consultation and there was a significant delay before the leaseholders were informed of the appointment. By then, the hearing was imminent.

44. Thirdly, Mr Hochenhill only produced a budget during the course of his oral evidence. We find that it would have been unreasonable to expect Mr Martin to withdraw his Section 24 application in the absence of any information regarding the proposed budget. The proposed budget drives both the level of service charges and the activities that are to be undertaken by the respondent company. Both issues are central to Mr Martin's concerns.
45. Fourthly, because of the absence of consultation, Mr Martin had no opportunity to interview Mr Hockenhill prior to his appointment. We have found Mr Hockenhill to be a professional and competent witness who is committed to providing a long term service but Mr Martin had no opportunity to make that assessment prior to the hearing.
46. Taking all four issues into account as well as our other findings of fact set out above, we find that it is just and equitable to make an order under Section 20C of the Landlord and Tenant Act 1985.

## Appeals

47. 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. 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.
48. 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.
49. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state

the ground of appeal, and state the result the party making the application is seeking.

**Judge D Archer (Chairman)**  
**Dated: 17 December 2013**

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