

9523



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

**Case Reference** : **LON/00AY/LAM/2013/0013**

**Property** : **5 Heyford Terrace, SW8 1XT**

**Applicant** : **Mr Simon Toms**

**Representative** : **Ashley Wilson Solicitors  
Mr O'Mahoney (Counsel)**

**Respondent** : **Thameside Investments Limited**

**Representative** : **Mr McCloud-James (Counsel  
instructed under the Direct Access  
Scheme)**

**Type of Application** : **Application for the appointment of  
a manager (section 24 Landlord &  
Tenant Act 1987)**

**Tribunal Members** : **Mr M Martynski (Tribunal Judge)  
Mrs H Bowers BSc (Econ) MSc  
MRICS  
Mrs R Turner JP BA**

**Date and venue of  
Hearing** : **11 November 2013  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **10 December 2013**

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**DECISION**

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## **Decision summary**

1. Mr Ian Harvey of Red Brick Management Limited is appointed as Manager of the building at 5 Heyford Terrace, SW8 as per the attached Management Order.
2. The appointment will be from 1 January 2014 and will be for an initial period of two years.
3. There is no order for costs save that the Respondent must pay to the Applicant an amount equivalent to the fees that he has paid to the Tribunal in making his application and any hearing fees that he has paid. Those costs are to be paid by no later than 28 days from the date of this decision.

## **Background**

4. The building in question, Heyford Terrace ('the Building'), is a three-storey terraced house converted into three flats.
5. The Applicant is the long leaseholder of the top floor flat. The Respondent Company owns the freehold to the Building. The other two flats on the ground and first floors are owned by a Mr Darren Gidden.
6. The Building is managed on behalf of the Respondent Company by 'Aces London'.
7. Mr Gidden is a director of both the Respondent Company and Aces UK Limited which trades, so far as these proceedings are concerned, as 'Aces London'.
8. The Applicant has owned his flat since 2003. The Respondent acquired the freehold interest in the Building in 2006. Mr Gidden acquired the long leasehold interest of flats A & B in 2005.
9. The Applicant's notice to the Respondent pursuant to section 22 Landlord and Tenant Act 1987 ('the section 22 Notice') is dated 6 March 2012.
10. The Applicant's application for the appointment of a manager is dated 8 May 2013.
11. Directions were first given on the application on 14 May 2013. Those directions gave a final hearing date of 5 August 2013. The hearing of 5 August was adjourned at the Respondent's request on the ground that the Respondent had not been served in time with the bundles for the hearing and/or had not had sight of the Applicant's evidence. The directions given at that hearing specifically set out an address for the Defendant for service of documents in these proceedings. An adjourned hearing date was set for 4 October 2013.

12. At the adjourned hearing, the Respondent made a further application for an adjournment. That application was made on two grounds; First, despite being given an address for service in writing, the Applicant's solicitors managed to send a bundle of further documents for the Respondent upon which they intended to rely to the wrong address; Second, Mr Gidden claimed that he was feeling unwell and could not proceed with the hearing. The Tribunal initially decided to proceed with the hearing but at the insistence of Mr McCloud-James (Counsel for the Respondent) that Mr Gidden felt too unwell to proceed, the Tribunal changed its decision and adjourned the hearing. A medical certificate later produced by Mr Gidden showed that he had attended at hospital later on the day of the hearing and had been examined. There was nothing shown to the Tribunal that the medical investigation found any reason for Mr Gidden to feel unwell that day. The Tribunal gave further directions and the matter was further adjourned to 11 November 2013.
13. The Tribunal took the opportunity on the 4<sup>th</sup> October 2013 to inspect the Building, the internal common parts and the interior of the Applicant's flat. The exterior of the Building was clearly in need of redecoration and clearly had not been decorated for some considerable time. Repairs were required to the exterior following on from this lack of decoration and maintenance. The external small front garden was poorly maintained.
14. The internal common parts were fairly basic and showed signs of heavy usage. The Tribunal noted a crude 'foam' repair at the top of the staircase. The meter cupboards were in a poor state of repair.
15. As to the interior of the Applicant's flat, there were clear signs of water ingress from the roof area within the kitchen, living room and bedroom.
16. At the conclusion of the final hearing on 11 November 2013, the Tribunal directed both parties to file further legal submissions on the question of whether or not the section 22 Notice had been validly served upon the Respondent. Those submissions were duly filed and this decision is based on the documents presented to the Tribunal on 11 November, the parties' evidence and submissions and the further written legal submissions filed after the hearing.

### **Technical and legal issues**

17. The Respondent took various technical points on the notice and proceedings which need to be dealt with before we can deal with the substantive application.

#### *The section 22 Notice*

18. It was argued by the Respondent that the section 22 Notice had not been validly served by the Applicant because that notice had been sent to Aces London and not to the registered office of the Respondent Company.

19. For our purposes, the relevant parts of sections 22 and 24 of the Landlord and Tenant Act 1987 ('the Act') provide as follows:-

**22.**

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

(i) the landlord, and

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

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

**24.**

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

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

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

20. In the Tribunal's view, the use of the word *must* in section 22(1) means that a tribunal only has jurisdiction to consider an application from a leaseholder for an order for the appointment of a manager if, prior to the making of that application, a notice has been served upon that leaseholder's landlord.
21. That such a notice is mandatory is, in our view, reinforced by the fact that the section goes on to specifically provide for just one exception to that requirement in subsection (3); that exception being where it would not be reasonably practicable to serve such a notice.
22. There is no argument that in this case, the section 22 Notice was not sent to the Respondent Company's registered address.
23. The section 22 Notice names the Respondent Company and was sent; *c/o Aces London PO Box 52269, London SW16 2NG*. As stated above, the section 22 Notice is dated 6 March 2012.
24. The Respondent Company, via its agent Aces London, had given the address of *PO Box 52269, London SW16 2NG* specifically as an address for service. For example a demand from Aces London addressed to the Applicant dated 1 January 2012, had the following endorsed upon it:-

In accordance with section 47 and 48 of the Landlord and Tenant Act 1987, the address at which notices may be served is as follows:  
Thameside Investment Limited, c/o Aces London, PO Box 52269, London SW16 2NG

25. The Applicant argued, correctly in the Tribunal's view, that as the Respondent Company had given an address for service (which specifically referred to the service of 'notices') then it was properly served with the section 22 Notice at that address even though that address is not the Respondent's registered office address.
26. The Respondent argued that, despite the fact that the Respondent had given an address for service, service at that address was not valid. In support of this stance the Respondent argued:-
  - (a) that the Applicant had complained in his section 22 Notice and in his application to the Tribunal that he had not been given proper details for the Respondent and that the Respondent had not given proper notice of the fact that it had acquired the freehold and that accordingly the Applicant could not now argue that the Respondent had given a valid address for service
  - (b) the provisions of section 48 of the Act were not properly complied with in any event in the demands sent out by the Respondent as those demands did not specify that the address for service included '*notices in proceedings*'.
27. The Tribunal rejects these arguments. The relevant part of section 48 is as follows:-
  - (1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.
28. The Applicant, in the section 22 Notice and in his arguments before the Tribunal was saying that certain specified notices (all preceding the date of his section 22 Notice) did not comply with other legislation (no mention was made of section 48 of the Act). He also argued that no proper notice had been given of the acquisition of the freehold by the Respondent Company. He specifically referred however to the Respondent Company being named as the freeholder in notices served upon him. At no point did the Applicant argue that section 48 of the Act had not been properly complied with.
29. Second, the wording set out on demands sent to the Applicant prior to the date of his section 22 Notice, although they do not contain the words '*notices in proceedings*' clearly provide the information that is required by section 48. That section was enacted so as to force landlords to give an address for service - this is clearly what the Respondent has done. Section 48 in any event does not require a prescribed wording.
30. Further, none of the cases referred to by Mr McCloud-James in his written submission are authority for a proposition that a notice served

under section 48 of the Act requires the exact wording of that Act in order to be valid. Indeed, those cases make it clear that the purpose of the section is that a tenant is provided with an address for service for the landlord, and that is exactly what was provided by the Respondent Company.

31. Insofar as this decision does not deal the other points raised on the question of service of the section 22 Notice in the parties' further submissions, whilst the Tribunal has considered those other points, it did not consider any of those to be relevant to the question.
32. The Tribunal finds therefore that the Notice was validly served in March 2012.

*Mis-description in the notice*

33. The Respondent complained that the section 22 Notice was defective as it set out the premises to which it related as simply Flat 5C, not the Building as a whole.
34. The Respondent argued that the notice therefore only relates to Flat 5C and can have no effect on the remainder of the Building. The Respondent further argued that there is no power to correct the Notice. The Respondent concluded that the jurisdiction of the Tribunal is only engaged if there is an application concerning more than one flat. As the notice seeks an order relating to just one flat, then it is defective and the Tribunal has no jurisdiction.
35. The relevant parts of Section 21 of the Act provide as follows:-
  - (1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to the appropriate tribunal for an order under section 24 appointing a manager to act in relation to those premises.
  - (2) Subject to subsection (3), this Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.
36. It appears to the Tribunal that on the above wording, 'premises' can be a part of a building if that building contains at least two flats and accordingly it is possible to apply for the appointment of a manager of just one flat in a building containing two or more flats.
37. Clearly the Applicant's solicitors did not draft the Notice properly and it should have referred to the Building rather than just the Applicant's flat.
38. Section 22(2) of the Act provides:-
  - (2) A notice under this section must—
    - (a) specify the tenant's name, the address of his flat and an address in

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

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

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

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

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

39. Section 24(7) of the Act provides as follows:-

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

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

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

40. Pursuant to section 24(7) then the Tribunal has the power to waive the defect of the notice failing to refer to the Building when it was the Building to which this application relates.

41. The question is then should the Tribunal waive this defect? We consider that the defect should be waived. Clearly, at the stage when directions were being given, the issue of exactly what premises the notice related to was a live one as the directions listed this as one of the issues to be addressed.

42. It was argued on the Respondent's behalf that, as the Notice related to only one flat and was therefore defective, the Respondent had no duty to act on it. This is of course wrong; the notice was not invalid per se by reason of only referring to one flat. It was therefore a valid notice upon which the Respondent could act.

43. When served with the notice therefore, the only uncertainty for the Respondent was whether the proposed application for the appointment of a manager was to be in relation just to the Applicant's flat or to the Building. We cannot see that this would or could affect the Respondent's response to the notice. The failings identified in the notice and the action required by it would relate equally to an order being sought in relation to just the flat or the Building. Further, there was no evidence from the Respondent that it was in any way prejudiced by the reference to just Flat C.

### *Service of the application*

44. It was argued that the application for the appointment of a manager had not been served on Mr Gidden who was an interested party and that accordingly he had been prejudiced.
45. This point clearly carries no force. Mr Gidden had (and took) the chance to prepare for the hearing and appeared throughout the hearing.

### **Substantive issues**

46. The Applicant relied upon the following categories of failings in the section 22 Notice:-
  - (a) Breach of obligations under the lease [s.24(2)(a)]
  - (b) Breaches of the RICS Code of Practice<sup>1</sup> [s.24(2)(ac)]
  - (c) Other circumstances [s.24(2)(b)]

### *Breach of obligations under the lease*

47. Here the Applicant relied upon the various problems that he had suffered with a leak from the roof above his flat over a number of years.
48. The written evidence regarding the roof considered by the Tribunal included the following:-
  - (a) there appeared to have been a leak from the roof in July 2007 (letter from the previous managing agents, Northshore, dated 26 July 2007)
  - (b) there appeared to have been another leak from the roof in or about January 2008 (letter from the previous managing agents, Northshore, dated 14 January 2008)
  - (c) In a letter dated 7 July 2008 the Applicant referred to the leaking roof as being "*a serious ongoing problem*"
  - (d) Later on in July 2008, the Respondent's managing agents were trying to make arrangements for a contractor to attend to the problem
  - (e) In a letter dated 15 March 2010 the Applicant refers to there now being three roof leaks (meaning the roof was leaking in three different places)
  - (f) According to the Applicant's chronology, it is not until late May 2010 that contractors are sent by the Respondent's managing agents.
  - (g) In a letter to Aces London dated 26 August 2010, the Applicant refers to "*damage and ongoing roofing leaks of which you are already aware*"

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<sup>1</sup> RICS Service Charge Residential Management Code, 2<sup>nd</sup> Edition, approved by the Secretary of State pursuant to section 87 Leasehold Reform, Housing and Urban Development Act 1993



- (h) In September 2010 scaffolding is erected and contractors attend.
- (i) By email dated 3 November 2010 sent to Aces London the Applicant states that he is unhappy with the work carried out to the roof, further emails are sent by the Applicant who continues to express his dissatisfaction with the work
- (j) In a letter dated 19 November 2010 to Aces the Applicant states *"I am unable to definitively say if there is further water ingress into our flat"*, he goes on to say *"the repairs are temporary and unlikely to stand the test of time"*
- (k) The Applicant's chronology records that on 21 July 2011 he got a message from his tenants that there was a major leak from the roof. In a letter to Aces London dated 5 August 2011 the Applicant states *"the roof has not been fixed sufficiently and is leaking into my property in the same place as before Aces repaired the roof"*
- (l) By notice dated 30 January 2012 (served pursuant to section 20 Landlord and Tenant Act 1985) the Respondent gives notice of its intention to carry out various works including works to the roof
- (m) In April 2012 further scaffolding is erected at the Building
- (n) By a notice dated 30 January 2012 (again served pursuant to section 20 of the Landlord and Tenant Act 1985) the Respondent gives details of estimates received in respect of the proposed works. This notice clearly does not comply with the regulations<sup>2</sup> regarding notices made pursuant to section 20 of the 1985 Act.
- (o) In a desk top report<sup>3</sup> Mr Guy Kilby F.I.o.R. considers photographs of the works carried out to the roof and concludes *"The repairs under taken [sic] by the contractors in 2010 on the slate roof in my opinion have not been undertaken to a standard that I would expect of an experienced roofing contractor"* – he makes various detailed comments on various failings regarding those works
- (p) In an expert report prepared on behalf of the Applicant dated 18 September 2013 following an inspection carried out on 13 September 2013, Mr Simon Levy FRICS MAE concluded that so far as the rear addition roof was concerned (this being the roof which had been worked on by the Respondent's contractors) – *"The roof coverings are in a state of disrepair. A substantial number of slates have become slipped, cracked and damaged. It is suspected that this has arisen from foot traffic on the roof.....As a consequence, repair and overhauling to the roof covering are required."* [paragraph 4.03.2]. Mr Levy's report makes it clear that the roof requires a full inspection and that

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<sup>2</sup> Service Charges (Consultation Requirements) (England) Regulations 2003 – the notice fails to invite comments on the estimates and fails to give any time period for such comments (there may or may not be further deficiencies in the notice)

<sup>3</sup> The Tribunal did not give permission for this report in any directions and further the report did not fully comply with the requirements for expert's reports set out in the Civil Procedure Rules; this Tribunal has accordingly afforded this document less weight than it would afford a report in respect of which permission was given and which complied with the requirements of the Civil Procedure Rules

some redesigning of the gutters and pipes on and around the roof may be required to prevent further water ingress.

49. It was the Respondent's case that the building had been maintained to a good standard<sup>4</sup>. Surprisingly the Respondent did not produce any documentation regarding the works carried out to the roof. Furthermore, no Service Charges had been levied upon the Applicant in respect of the work in question or in respect of any of the scaffolding that had been put up.
50. Despite the Respondent having served notices of intended work (including roof work) upon the Applicant, no further work to the Building or its roof had been carried out as at the date of the hearing of this application.
51. The Tribunal concludes that the Respondent Company has been in breach of its obligation under clause 3(e)(i) of the Applicant's lease in that it has failed, in the words of that section of the lease; "*to maintain repair.....and keep in good repair and condition....including the main walls and roof.....*".
52. Whilst it is accepted that repairs to the roof have been carried out and that a landlord is entitled to carry out patch repairs rather than full scale replacement or repair where appropriate, the repairs that were carried out were not properly done and the Respondent failed to take any or sufficient account of the Applicant's complaints regarding those repairs. From the time that repairs were carried to the roof in 2010 there have been further substantial leaks and the roof has been left in a state of disrepair.
53. Furthermore the Tribunal is satisfied that the Respondent should have, but has failed to, carry out a proper inspection and investigation of the areas where water has been coming into the Applicant's flat and the roof and to take the necessary action to prevent further problems.

*Failure to comply with the RICS Code of Management - Service Charge and Ground Rent demands*

54. The Applicant complained that various demands for Service Charges and Ground Rent sent out to him by the Respondent's managing agents were defective in that they did not comply with the relevant regulations in force at the time.
55. The Respondent did not contest the allegations that the demands were defective.
56. These defective demands were however, as at the date of the section 22 notice (March 2012), all historic. None of the defective demands particularised in the notice post dated August 2010.

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<sup>4</sup> Statement of Mr Gidden dated 1 August 2013, paragraph 11

57. Clearly therefore, so far as the section 22 Notice was concerned, the issue of defective demands was not an ongoing one.
58. The failing demonstrated by the defective demands is a failure to manage properly by being aware of the relevant legislation in force relating to property management. The fact that the failing in this instance was historic was pointed out and relied upon by the Respondent. However, the Tribunal pointed out whilst Mr Gidden was giving evidence, that there appeared to be an ongoing failure to comply with regulations in notices in that (as previously mentioned in this decision) the notice dated 30 January 2012 served pursuant to section 20 of the Landlord and Tenant Act 1985 the Respondent did not comply with the relevant statutory regulations.

*Failure to comply with the RICS Code of Management- request to inspect accounts and documents*

59. The Applicant complained that he had requested information about the insurance and accounts but that he had not received a response within the time frames set out by statutory regulation and in the RICS Code of Practice.
60. The Applicant relied upon letters of request dated 10 & 19 November 2010 and 5 August, 15 September 2011.
61. The letter dated 10 November 2010 asks for a copy of the insurance cover and refers to an earlier request for a list of expenditure on Service Charges.
62. The Respondent produced a letter dated 24 November from Aces to Mr Toms. That letter states:-

The records held and inspection will be at the registered office at Unit 1, 225 Leigham Court Road, Streatham, London Sw16 2SD.  
As discussed, please can you confirm by return your availability to inspect the files and accounts?
63. This letter does not appear to address the request for a summary of insurance cover.
64. The letter also does not appear to address the request for a summary of the Service Charges. Paragraph 10.16 of the RICS Code of Management appears to provide that such a summary should be sent out to a tenant making a request. After such a summary has been sent out, there is a further duty on a manager to give a tenant an opportunity to inspect accounts and supporting documents (paragraph 1.22 of the Code). Whilst the letter from the Respondent says where documents can be inspected, this does not deal with the request for a summary.

65. The further letters from the Applicant dated 5 August and 15 September 2011 asking about insurance and Service Charges appear to go unanswered.
66. It was accepted by the Applicant that insurance details were eventually received, but long after the various requests were made.
67. The Tribunal finds that there was no clear response to the Applicant's request for information on insurance and Service Charges and that this, certainly so far as giving a summary of insurance cover is concerned, was a breach of the Respondent's statutory and regulatory duties.

*Failure to comply with the RICS Code of Management – Common parts health and safety issues*

68. The section 22 notice complained of:
  - no smoke alarms in the communal hallway
  - broken light in the communal hallway
  - damaged light switch
  - damaged bannister
69. These matters appear to have been dealt with at some point after the notice was served. However, the report from Redbrick Management following an inspection on 3 August 2013 highlighted some different and ongoing issues regarding the upkeep of the common parts such as a broken light switch, missing trunking on wiring, missing cover to light, exposed wiring and unsatisfactory electrical cupboard.

*Other circumstances*

70. The Tribunal did not find the other allegations made by the Applicant as to notification of the transfer of the freehold interest to the Respondent and the fact of the Respondent being registered as a dormant company was of any relevance in the Tribunal's decision.

**The Tribunal's decision**

71. The Tribunal is satisfied that:-
  - (a) the Respondent has been in breach of its obligation to repair and maintain the roof of the Building
  - (b) there has been a failure to comply with the RICS Code of Practice in that:-
    - i. invalid demands for Service Charges and Ground rent have been served
    - ii. there appears to be a continued ignorance of statutory requirements for notices served under section 20 of the Landlord and Tenant Act 1985
    - iii. there has been a failure to properly comply with requests for information regarding insurance cover

and in both cases that it is just and convenient for a manager to be appointed

(c) There are other circumstances which make it just and convenient for an order to be made for the appointment of a manager

72. As to those 'other circumstances' the Tribunal finds that Mr Gidden and Aces Management are not capable of managing the Building properly.

73. From the evidence before the Tribunal, Mr Gidden and Aces management clearly have no idea of how to properly manage a building. We say this because:-

(a) it was clear when Mr Gidden was giving evidence that he had not heard of the RICS Code of Practice and so did not manage in reference to it. When asked by the Tribunal what code of practice he followed in managing property, Mr Gidden said that his code was "*to be fair to everyone*".

(b) No-one at Aces had any recognised qualification in building management and no-one appeared to belong to any recognised trade association

(c) The Respondent or Aces or Mr Gidden ran the Building by charging a fixed annual Service Charge of £500.00 per year regardless of actual costs [the Applicant's lease provides for a Service Charge to be based on actual costs – see clause 2.(f)(a)&(b)].

(d) There was no evidence of any proper accounting for the Building – there was no evidence of accounts or of invoices for expenditure

(e) There was no evidence of a proper management agreement between Aces and the Respondent

(f) Mr Gidden said that when it came to works carried out at the building, the costs of those works (to the roof) had not been charged to the Applicant and that he subsidised the costs of the works

74. The way in which the Building is run means that the Applicant is not consulted regarding works (if he is not asked to pay for them, there is no duty to consult him). Clearly this is wholly unsatisfactory. The fact that there has been no consultation and no charge for work means that Mr Gidden effectively runs the building completely to his own convenience and without regard to the Applicant's needs and concerns.

75. There appears to be no distinction between Aces management, Mr Gidden and the Respondent Company, if there were, Mr Gidden would not be able to subsidise building works in the way that he has done.

76. Clearly the Applicant is put into a difficult position by the way in which the Building is managed. He has not been consulted. He continues to receive defective notices, he does not get any proper Service Charge accounts. As a result of all of this, he may well have some problems if he comes to sell the flat. Any purchaser will want to make sure that the

Building is run properly and that there has been proper compliance with the Service Charge provisions of the lease.

77. From the Tribunal's inspection of the Building, it does not appear to be well maintained in terms of decoration, repair and general appearance.

### **The proposed manager**

78. The proposed manager, Mr Harvey of Redbrick Management supplied a report and other documents to the Tribunal and gave evidence directly to the Tribunal as to his experience and his company's set up.

79. The Tribunal is satisfied that Mr Harvey is a proper person to be appointed as manager of the Building for the following reasons:-

- Redbrick has a large portfolio of property in London and outside London
- The company is properly insured
- The company is a member of the Association of Residential Managing Agents
- Mr Harvey is fully familiar with the RICS Code of Practice
- Mr Harvey himself is very experienced in property management
- The company has a model form of management contract with an approved and clear scale of charges
- Mr Harvey was aware of his duties and responsibilities upon being appointed as a manager by the Tribunal
- Mr Harvey had a clear plan for the Building, in particular the roof
- Mr Harvey was aware of the necessary accounting that was needed under the terms of the Applicant's lease and his company was equipped to deal with that accounting
- Redbrick have an acceptable out of hours service arrangement
- The fees proposed by Redbrick are within a reasonable scale of fees charged generally by agents managing a property of this nature

### **The period of management**

80. It was put to Mr Harvey that he would be able to sort out the main issues with the Building within a year. Mr Harvey agreed with this. It was therefore suggested to the Tribunal by the Respondent that the appointment of a manager should be of a period of no more than a year.

81. The Tribunal considers that the initial period of appointment in this case should be two years. Major works are required to the roof, repairs and decorations are needed to the Building. These matters alone may take the best part of year.

82. The Building needs proper accounting, the Service Charge year in the lease is the calendar year. Proper accounts can only be prepared after a

year has passed. To restrict the management period to less than a year may not guarantee a proper accounting process.

83. In all the circumstances and the many failings of management over a considerable number of years, the Building needs a consistent run of management for at least two years.

## **Costs**

### *Penalty costs*

84. The Applicant applied for his costs to be paid by the Respondent on the grounds that the Respondent had behaved unreasonably in the proceedings and in particular that it had caused the proceedings to be twice adjourned.
85. There is no clear evidence that the two adjournments of the final hearing were due solely to the fault of the Respondent. There had been failures on the part of the Applicant's solicitors to properly serve documents. There was no evidence that Mr Gidden was not telling the truth when he said that he was too ill to carry on with one of the hearings.
86. Although the Respondent has effectively lost, it was entitled to contest the application and there was no unreasonable behaviour in so doing.
87. Accordingly the Tribunal does not make any award of costs in respect of the Respondent's conduct.

### *Tribunal fees*

88. As the Applicant has been successful, it is however appropriate that the Respondent should pay to the Applicant a sum equivalent to the fees that he has paid to the Tribunal.

**Mark Martynski**  
**Tribunal Judge**  
**10 December 2013**



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

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**Property** : **5 Heyford Terrace, SW8 1XT**

**Applicant** : **Mr Simon Toms**

**Respondent** : **Thameside Investments Limited**

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

**Tribunal Members** : **Mr M Martynski (Tribunal Judge)  
Mrs H Bowers BSc (Econ) MSc  
MRICS  
Mrs R Turner JP BA**

**Date of Order** : **10 December 2013**

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**ORDER FOR THE APPOINTMENT OF A MANAGER**

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1. In accordance with section 24(1) Landlord and Tenant Act 1987 Mr Ian Harvey of Red Brick Management Limited ('the Manager') is appointed as manager of the Building at 5 Heyford Terrace, SW8 1XT ('the Building') as from 1 January 2014.
2. The order shall continue for a period of two years.
3. The Manager shall manage the Building in accordance with:
  - (a) The directions and schedule of functions and services attached to this order.
  - (b) The respective obligations of the landlord and the leases by which the flats at the Building are demised by the Respondent and in particular



with regard to repair, decoration, provision of services and insurance of the Building.

- (c) The duties of a manager set out in the Service Charge Residential Management Code ("the Code") 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

Mark Martynski (Tribunal Judge)  
10 December 2013

### **DIRECTIONS**

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Building, the Respondent or the Tribunal.
2. That no later than two weeks after the date of this order the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicants and the Respondent shall transfer to the Manager all the accounts, books, records and funds (including without limitation, service charge reserve fund).
3. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Building shall upon 1 January 2014 become rights and liabilities of the Manager.
4. The Manager is to be entitled to prosecute claims in respect of causes of action accruing before or after the date of his appointment.
5. The Manager shall account forthwith to the Respondent for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.
6. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Building) in accordance with the Schedule of Functions and Services attached.
7. The Manager shall be entitled to apply to the Tribunal for further directions.

### **SCHEDULE OF FUNCTIONS AND SERVICES**

### **Insurance**

- i. Maintain appropriate building insurance for the Building. Ensure that the Manager's interest is noted on the insurance policy.

### **Service charge**

- i. Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- ii. Set, demand and collect service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees. Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- iii. Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Building with the service charge budget.

### **Accounts**

- i. Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor if required by the Manager.
- ii. Maintain efficient records and books of account which are open for inspection. Produce for inspection, receipts or other evidence of expenditure.
- iii. Maintain on trust an interest bearing account/s at such bank or building society as the manager shall from time to time decide into which, service charge contributions and all other monies arising under the leases shall be paid.
- iv. All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

### **Maintenance**

- i. Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Building.
- ii. Give consideration to works to be carried out to the Building in the interest of good estate management and making the appropriate recommendations to the Respondent and the lessees.
- iii. Set up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Building. The programme must be put in writing and sent to all leaseholders within three months of the manager's appointment.

### **Agreement and Fees**

The management agreement will be the standard management agreement an example of which is attached to this order. The fee shall be £1,000 plus VAT per annum.

### **Complaints procedure**

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

# redbrick

## MANAGEMENT AGREEMENT

BETWEEN

Client Details

Name:

Registered Office:

Contact Details:

Tel No:

Email:

and

Name:

**Red Brick Management Limited  
trading as Red Brick**

Registered Office:

106 High Street, Stevenage, Hertfordshire SG1 3DW

Contact Details:

Tel No: 01438 303333

Fax No: 08458 621824

Email: info@redbrickpm.co.uk

for

Property:

Flats A, B & C 5 Heyford Terrace, London, SW8 1XT

Date of Agreement:

4<sup>th</sup> October 2013

**Management Agreement between Red Brick  
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**October 1, 2013**

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**TERMS AND CONDITIONS**

**1. Definitions**

- 1.1 The 'Client' means the resident management company, right to manage company, or landlord named in the cover sheet to this agreement.
- 1.2 The 'Manager' is the managing agent named in the cover sheet to this agreement.
- 1.3 The 'Property' is the estate, scheme, or development named in the cover sheet to this agreement and as described IN Appendix I of this agreement.
- 1.4 The 'Management Fee' is the fee set out in the fee agreement in Appendix I.
- 1.5 The 'Services' mean the services set out and the frequency specified in Appendix II.
- 1.6 'Additional Charges' are the charges listed for additional services in Appendix III.
- 1.7 'Review Date' means the review date specified in the fee agreement in Appendix I.
- 1.8 'Term' means the term or period specified in the fee agreement in Appendix I.
- 1.9 The 'Parties' means the Client and the Manager.

**2. Appointment**

- 2.1 The Client appoints the Manager to be its managing agent for the Property for the Term.

**3. Services to be provided by the Manager**

- 3.1 The Manager will perform with reasonable care, skill and diligence the Services set out with the frequency specified in Appendix II for the Management Fee as set out in Appendix I.
- 3.2 The Manager will provide additional services for the Client for Additional Charges as set out in Appendix III.

**4. Conduct of the Manager**

- 4.1 The Manager must comply with the terms of the leases of the Property.
- 4.2 The Manager must comply with the Service Charge Residential Management Code of the RICS as appropriate.
- 4.3 The Manager must comply with relevant landlord and tenant legislation relating to the management of the Property.
- 4.4 The Manager must comply with health and safety, employment and all other relevant laws and regulations relating to the management of the Property.
- 4.5 The Manager must hold professional indemnity insurance including fidelity cover and maintain it during the Term. On request, the Manager must give the Client a copy of the certificate of insurance.
- 4.6 The Manager must comply with the rules of the Financial Conduct Authority when carrying out any regulated insurance activities.
- 4.7 The Manager must at all reasonable times allow the Client access to all records and accounts appertaining to the management of the Property.

**Management Agreement between Red Brick  
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**October 1, 2013**

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**5. Conduct of the Client**

- 5.1 The Client will use its best endeavours to ensure the handover of the documents listed in Appendix IV, the Takeover List, to the Manager.
- 5.2 The Client must not issue any instructions to the Manager that require it to breach the leases of the Property, legislation, the recognised Codes of Practice or any regulations relating to the management of the Property.
- 5.3 The Client must act in a manner that ensures there is no unlawful discrimination in the provision of services, the sales and lettings of units at the Property and the employment of any staff or contractors.
- 5.4 The Client should not give instructions to the Manager's staff working solely at the Property. Any instructions should be given through the Manager's nominated representative as agreed between the Parties.
- 5.5 The Client is not required to arrange and hold directors' and officers' liability insurance for the Term but is advised to do so. On request, the Client will give the Manager a copy of any such insurance certificate.
- 5.6 The Client must keep the Manager informed of any notices, sales of leaseholds or freehold, possible formation of resident associations, exercise of the right to manage, enfranchisement and any other matter relating to the management of the Property of which the Client becomes aware.
- 5.7 When oral instructions are given by the Client to the Manager, these must be confirmed in writing by post or email within 7 days.

**6. Commissions**

- 6.1 The Manager may have arrangements with insurance companies/brokers and other contractors that allow the receipt of commissions.
- 6.2 The Manager must disclose to the Client all commission arrangements in writing that may apply to the management of the Property.
- 6.3 The Manager is authorised to retain the commission from the arrangements already declared.
- 6.4 The Manager must disclose any further arrangements to the Client that may lead to the receipt of commission that arise during the Term.

**7. Fees and charges**

- 7.1 The fees and charges payable by the Client to the Manager are as set out in Appendices I and III and are payable without any right of set-off against any other account with the Client.
- 7.2 The Client authorises the Manager to deduct the Management Fee and Additional Charges from the designated bank account on the dates set out in the Fee Agreement.
- 7.3 The Client must pay the Manager a setting up fee as specified in Appendix I for the work involved in setting up the management arrangements for the Property. The fee must be paid as soon as this agreement is signed.
- 7.4 The Client will pay to the Manager interest on any overdue fees and charges payable by the Client to the Manager at the rate of 4% over base rate of Barclays Bank from the date the fee or charge became due until the date of payment.

**8. Changes to Management Fee and Additional Charges**

- 8.1 On the Review Date the amounts payable under Clause 7 may be varied as follows:

**Management Agreement between Red Brick  
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- a) By agreement between the parties, but not less than the amount by which the Retail Price Index has changed for the 12 month period ending on the date that is 3 months before the Review Date; or
- b) If no agreement is reached, then the amount by which the Retail Price Index has changed for the 12 month period ending on the date that is 3 months before the Review Date.

N.B. Any Fees or Additional Charges may be subject to specific alteration where legislative obligations or changes of the services required add to the existing workload.

**9. Handling of Client's Money**

- 9.1 The Manager must comply with statutory and ARMA and RICS Code rules for banking and holding any funds of the Client in a clearly designated client bank account. Any such client funds must be held in trust.
- 9.2 The Manager will open a designated bank account(s) on behalf of the Client in the name of the Property or the Client for the receipt of all money due to the Client and the payment of expenses relating to the Property.
- 9.3 The Client authorises the Manager to make payments for the benefit of the Property (*or within the limits set out in 9.6 below*) from the designated bank account(s) held for the Property.
- 9.4 The Client authorises the Manager to deduct any outstanding Management Fee and Additional Charges from the designated account after this management agency agreement terminates.
- 9.5 It is hereby agreed that any interest earned on the designated account(s) shall be a credit to that account.
- 9.6 Save for in emergency situations the expenditure authorisation limit of the Manager without referral to the Client, exclusive of VAT (per item), is as set out in Appendix II.
- 9.7 The Manager shall notify the Client as soon as possible of any lack of funds to pay for the services. The Client shall put the Manager in funds to pay for services required if there is a deficit for any reason.

**10. Liability**

- 10.1 The Client indemnifies the Manager against all costs, expenses and liabilities including legal costs properly incurred in performing the Services under this agreement.
- 10.2 No liability shall be attached to the Manager either in contract or in tort or otherwise for any loss, injury, damage or legal or other expenses sustained as a result of:
  - a) the Manager having reasonably relied upon the Client to provide accurately all relevant information;
  - b) any inaccurate forecast by the Manager of future income or expenditure unless done so negligently;
  - c) any defect in the properties, or plant and machinery, equipment or materials used for the properties, whether or not such defect be latent or apparent upon examination;
  - d) the act, omission or insolvency or any person other than the Manager.
- 10.3 The Client shall indemnify the Manager in respect of any claims made by another or third party for any loss, damage or legal and other expenses referred to in the above unless it be as a result of the Manager's negligence.
- 10.4 The Manager shall not be liable to indemnify the Client in respect of any claims made by another or third party for any loss, injury, damage or legal or other expenses referred to in the above.
- 10.5 The above shall not be valid insofar as prohibited by statute.

**Management Agreement between Red Brick  
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10.6 In no circumstances shall the Manager be liable for any consequential loss or damage save where loss, death or injury results from negligence on the part of the Manager.

**11. Assignment**

11.1 This agreement may only be assigned by the Client or the Manager with the written consent of the other party to this agreement.

**12. Ending this Agreement**

12.1 This agreement will end at the expiry of the Term specified in Appendix I.

12.2 This agreement may be terminated at any time by the mutual consent of the parties in writing.

12.3 The Client may end this agreement at any time in writing if:

- (a) the Manager is in breach of this agreement, and the Client has notified the Manager of that breach in writing, and the breach has continued for 30 days after that notice; or
- (b) the Manager becomes insolvent or makes other arrangements with its creditors ; or
- (c) the Manager's membership of the Association of Residential Managing Agents has been suspended or ended; or
- (d) the leaseholders of the Property exercise the right to manage or enfranchise or a manager is appointed by a Leasehold Valuation Tribunal.

12.4 The Manager may end this agreement at any time in writing if:

- (a) the Client fails to pay the Management Fee or other Additional Charges owing to the Manager within one calendar month of notice of the fee and charges; or
- (b) the Client acts in a way that prevents the Manager from performing its Services under this agreement and more specifically is in breach of 5.2 or 5.3 above.

12.5 Either party may end this agreement on any ground other than those set out above upon giving not less than 1 months' notice in writing.

12.6 When this agreement is ended the Manager will handover to the Client the documents itemised in Appendix IV, the Handover List, if they are in his possession.

12.7 Unless agreed otherwise all documents created by the Manager during the period of this management agreement for the Client shall belong to the Client.

**13. Dispute Resolution**

13.1 If any dispute arises over the interpretation of or compliance with the specific clauses in this agreement, the Parties will attempt to settle it by negotiation. Each of the Parties is to be represented by a person who is a director, or of equivalent executive authority, with authority to settle the dispute.

13.2 If the Parties are unable to settle any such dispute by negotiation within 21 days, they will attempt to settle it by mediation in accordance with The Ombudsman Service: Property guidelines.

13.3 If the Parties have not settled the dispute by mediation within 42 days from when mediation began/or the date of the ADR notice, the Client can refer the dispute to the Association of Residential Managing Agents with a view to using the Association's Residential Management chosen Adjudication Scheme which is The Ombudsman Service: Property.



**Management Agreement between Red Brick  
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**October 1, 2013**

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**14. Data Protection**

- 14.1 The Manager confirms its registration under the Data Protection Act and its compliance therewith.
- 14.2 The Manager confirms it will only hold and retain information for the purpose of fulfilling this Agreement.
- 14.3 The Manager confirms that suitable procedures are in place to safeguard such information from improper use or disclosure.

**15. Communication between the Parties**

- 15.1 Any communication or instruction from the Client to the Manager shall be made by a director or secretary of the Client or person of equivalent executive authority.
- 15.2 Service of written communications shall be by first class post to the address shown on the front cover of this agreement, by fax or e mail. Notice to end this agreement shall be by registered or recorded delivery post only.
- 15.3 Any communication in writing will be deemed to have been served on the third working day after posting except for notices to end this agreement which shall be deemed to have been served the second working day after posting.

**16. Waiver**

- 16.1 If either party at any time agrees to waive its rights under this agreement, then that waiver does not prevent the party insisting upon its rights at any other time.

**17. Legal Jurisdiction**

- 17.1 This agreement shall be governed by the law of England and Wales.
- 17.2 Each party agrees to abide by the jurisdiction of the courts of England and Wales over any claim arising from this agreement.

Signed on behalf of the Client.....

[Print name and position.....]

Signed on behalf of the Manager.....

[Print name and position.....]

In the presence of: Signature.....

Name in capitals.....

Dated.....

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Management Agreement between Red Brick  
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October 1, 2013

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APPENDIX I

THE PROPERTY AND FEE AGREEMENT

THE PROPERTY

- The property comprises *14 leasehold units*

THE FEE AGREEMENT

- The **Term** of this Agreement is for 1 month. The agreement then automatically renews on a month to month basis thereafter.
- The **Setting-up fee** is £0.00+ VAT and is payable as soon as this Agreement is signed
- The **Management Fee** is payable for the services in Appendix II and is *£1,000.00 per annum plus VAT*.
- The Management Fee is to be paid **quarterly in advance**.
- The Management Fee and **any Additional Charges must be paid to the Manager** in accordance with clauses 7 and 8 of the agreement
- The **Review Date** for the Management Fee and Additional Charges is each anniversary of the date of this agreement at which time it would be reviewed and incremented in line with inflation or otherwise as may be mutually agreed.
- The **Ground Rent Collection Fee** is *not applicable*.

**Management Agreement between Red Brick  
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**October 1, 2013**

**APPENDIX II  
THE SERVICES**

DESCRIPTION	FREQUENCY
Opening and handling bank accounts	As required
Preparing and sending out service charge estimates	In accordance with lease or transfer
Collecting service charges and reserve fund contributions including sending any required statements.	In accordance with lease or transfer
Processing payments relating to the Property within expenditure limits (9.6 refers) and funds available or as reasonable expediency shall dictate	As required, no limit
Accounting for services charges	As reasonably required
Providing information to accountants for preparing annual accounts	Annually
Using best endeavours to collect current and ongoing routine service charge arrears but not action requiring legal work or LVTs	Ongoing
Providing 'day to day' management information to lessees and owners, subject reasonableness as regards frequency, extent and availability	As reasonably required
Liaising with the Client	As reasonably required
Liaising with any recognised resident(s) association(s)	As reasonably required
Arranging buildings and other insurance and dealing with general claims	As reasonably required
Entering into and managing maintenance contracts on behalf of the Client, viewing and checking the condition of common parts of the Property, without the use of inspection equipment, then deal with any necessary repairs other than major repairs	As reasonably required
Preparing specifications and contracts for minor works and services such as cleaning, gardening, window cleaning and overseeing such works	As reasonably required
Organising periodic health and safety checks (but not specialist checks and tests) and ensuring appropriate risk assessments are in place	As reasonably required
Consultation with the client on management matters and qualifying works	As reasonably required
Consultation with the client on long term agreements except for consultation on the appointment of a managing agent	As reasonably required
Engaging and supervising on behalf of the Client site staff for the Property and dealing with all matters relating to their employment other than pension and Industrial Tribunal matters	As reasonably required
Visiting the Property	4 visits per annum
Dealing with day-to-day lessee issues and reporting to and taking instruction from the Client on lessees' dissatisfaction	As necessary
Advising the Client on all relevant legislative and regulatory issues and general interpretation of leases	As necessary
Maintaining adequate/suitable files and records on the management of the Property	As necessary
Providing copy documents including insurance policies, copies of invoices and receipts, for which there may be a charge	As reasonably required
Keeping records of residents and tenancy details where provided	As necessary
Advising and liaising with the Client on management policy	As reasonably required
Issuing demands for administration charges and required summaries of rights	As necessary
Holding meetings with residents/members	1 per annum
Holding meetings with directors	2 meetings per annum

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**October 1, 2013**

**APPENDIX III**

**ADDITIONAL CHARGES**

<b>ADDITIONAL SERVICES</b>	<b>FREQUENCY</b>	<b>CHARGING BASIS where not included in the Services</b>
Any additional work entailed, where the information as listed in Appendix 4 is not forthcoming on the Takeover list	As required	Hourly rate as per scale of charges
The collection of arrears existing at the time of takeover	As required	Subject to agreement
Calculating Interest receivable on late payment of charges	As required	Within management fee
The provision of lessee 'welcome packs	As required	Subject to agreement
Fees for specialist advice on assessment of major repairs and decoration or other issues	As required	Hourly rate as per scale of charges
Negotiating with local and statutory authorities regarding operation or amendment or improvements to communal services as necessary	As required	Hourly rate as per scale of charges
Drawing up and reviewing risk assessment plans. Advising on health and safety matters and other legislative requirements	As required	Hourly rate as per scale of charges
Preparing specifications, obtaining tenders and supervising major works not covered by annual contracts including instructing and liaising with specialist consultants, inspecting work in progress, and handling retentions	As required	10% of cost of works
Advising and providing information on the transfer of leases	As required	Cost to Lessee/Owner
Providing information for Home Information Packs	As required	Cost to Lessee/Owner
Responding to pre-contract enquiries	As required	Cost to Lessee/Owner
Advertising and recruiting site staff on behalf of the Client	As required	Hourly rate as per scale of charges
Dealing with any pension issues relating to site staff	As required	Hourly rate as per scale of charges
Subletting, changes of use and handling requests for any necessary approvals, lease extensions and variations	As required	Hourly rate as per scale of charges
Preparing replacement cost assessment for insurance valuation purposes on buildings and landlord contents	As required	Recharge of Professional Fees
Dealing with any major insurance claims	As required	10.0% of cost of works
Preparing schedules of dilapidation or condition in respect of individual dwellings	As required	£250.00 + VAT each instance
Supplying additional copies of the accounts and other documents	As required	£5.00 + VAT per document
Dealing with requests for improvements or alterations by leaseholders and related party wall matters	As required	Hourly rate, refer to scale below
Legal recovery of unpaid service charges or ground rents or action for non-compliance with leases including instructing solicitors and preparing for and attending Court/LVT	As required	Included in Management Fee except appointment of Solicitors.
Carrying out appraisals of reserve funds including surveys of Property and reporting to Client	As required	Hourly rate, refer to scale below
Dealing with S20 consultations, including serving the required notices	As required	5% of cost of works
Company Secretarial Services, acting as Company Secretary to the Client	Annually	Not applicable in this instance

**APPENDIX III (Continued)**

**Management Agreement between Red Brick  
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**ADDITIONAL CHARGES**

<b>ADDITIONAL SERVICES</b>	<b>FREQUENCY</b>	<b>CHARGING BASIS where not included in the Services</b>
Issuing membership or share certificates	As required	Not applicable in this instance
Fees of specialist advisers	As required	Recharge of actual cost
Providing any form of services to the Client over and above this Management Agency agreement in relation to the exercise by the lessees of Enfranchisement, the Right to Manage or as the result of the Appointment of a Manager by a LVT	As required	Hourly rate, refer to scale below
Dealing with taxation issues relating to trust fund interest	As required	Hourly rate, refer to scale below
Any matters relating to rent reviews	As required	Hourly rate, refer to scale below
Answering of queries from the lessees where excess work arises from the unreasonable expectations of those lessees	As required	Hourly rate, refer to scale below
Providing detailed legal advice on any of the above	As required	Recharge of actual cost
Providing accommodation for meetings and inspection of documents and the facility to make photocopies	As required	Recharge of actual cost

<b>Scale of charges</b>	
<b>Directors and Senior Management</b>	<b>£75.00 per hour</b>
<b>Property Management and Administration Staff</b>	<b>£30.00 per hour</b>

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**APPENDIX IV**

**THE TAKEOVER AND HANDOVER LISTS**

**A The Takeover List**

The Parties hereby agree that the Client shall ensure that the following records, documents and information shall be made available to the Manager in taking over management of the Property.

Description	Availability/Timescale

Management Agreement between Red Brick  
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APPENDIX IV (Continued)

THE TAKEOVER AND HANDOVER LISTS

B The Handover List

The Parties hereby agree that the Manager on ceasing to manage the Property shall make available to the Client the following records, documents and information.

<i>Description</i>	<i>Availability/Timescale</i>
<b>THE PROPERTY</b> <ul style="list-style-type: none"><li>• Copy of the Land Certificate.</li><li>• Plans and drawings if any of the site and buildings.</li><li>• Details of utilities and location of main stop-cocks etc.</li><li>• Details of any major works and long term agreements ongoing and copies of S.20 notices and responses given.</li><li>• Details of any major works and long term agreements planned and copies of any related S.20 notices and responses given.</li><li>• Details of plant, machinery and relevant documentation.</li><li>• Copies of statutory inspection reports.</li><li>• Arrangement for out of hours emergencies.</li></ul>	<i>All as available, and on cessation of management duties or 28 days after receipt of Notice whichever may be the later.</i>
<b>INSURANCE</b> <ul style="list-style-type: none"><li>• Contact details of current broker/insurers.</li><li>• Original of schedule and policy for the property.</li><li>• Details of most recent valuation of the property.</li><li>• Summary of claims history over past three years.</li><li>• Files on open insurance claims and agreement on who will handle such.</li><li>• Details of third party and employers liability (including current and all previous certificates for employers liability where employer is not changing).</li><li>• Originals of mechanical engineering insurance and the last three years' inspection reports.</li></ul>	<i>All as available, and on cessation of management duties or 28 days after receipt of Notice whichever may be the later.</i>
<b>CONTRACTS AND CONTRACTORS</b> <ul style="list-style-type: none"><li>• Details of all current contracts.</li><li>• Details of regular contractors used and the scope of their duties and payment terms.</li><li>• Details of any current warranties.</li></ul>	<i>All as available, and on cessation of management duties or 28 days after receipt of Notice whichever may be the later.</i>

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**APPENDIX IV (Continued)**

**THE TAKEOVER AND HANDOVER LISTS**

<p><b>THE LESSEES</b></p> <ul style="list-style-type: none"> <li>• Originals or copies of all leases and deeds of variation and other licences etc.</li> <li>• Copy of any current house rules.</li> <li>• Details of any ongoing assignments.</li> <li>• Names and contact details of all lessees, including those who are not resident.</li> <li>• Details of any sub-let flats and their occupants.</li> <li>• Schedule of ground rents payable.</li> <li>• Schedule of service charge apportionments per unit.</li> </ul>	<p><i>All as available, and on cessation of management duties or 28 days after receipt of Notice whichever may be the later, save for names &amp; addresses, which will be provided within 2 working days of any request for the provision of the same.</i></p>
<p><b>LEGAL</b></p> <ul style="list-style-type: none"> <li>• Details of any current disputes whether involving lessees, contractors or other parties.</li> <li>• Details of any current or impending litigation whether for or against the client.</li> <li>• Details of solicitors employed.</li> </ul>	<p><i>All as available, and on cessation of management duties or 28 days after receipt of Notice whichever may be the later.</i></p>
<p><b>ACCOUNTING INFORMATION</b></p> <ul style="list-style-type: none"> <li>• Certified service charge accounts for at least the last three years and preferably six years or longer.</li> <li>• Copy of the current service charge budget.</li> <li>• Bank statements relating to lessee and client monies for the property.</li> <li>• A reconciled copy of the cash book.</li> <li>• Service charge balances and statements.</li> <li>• Paid contractors and suppliers invoices for the current period and previous years. (Note:- The receipts and invoices to support service charges belong to landlord so, if the agent changes, all years held should be handed over. LVT's can now go back many years if a challenge is made by lessees.)</li> <li>• Outstanding contractors and suppliers invoices.</li> <li>• Reconciled trial balance and supporting schedules made up to the date of the handover.</li> <li>• A cheque for the balance of funds in hand.</li> <li>• Method of payment used by each lessee.</li> <li>• Agreed payment plans for arrears if any.</li> <li>• Copy correspondence about any outstanding arrears.</li> </ul>	<p><i>All as available, and on cessation of management duties or 28 days after receipt of Notice whichever may be the later, save for reconciliation of client account and provision of lessee balance information, which will be provided within 28 days of actual cessation date.</i></p>



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**APPENDIX IV (Continued)**

**THE TAKEOVER AND HANDOVER LISTS**

<b>STAFF</b> <ul style="list-style-type: none"><li>• Copies of any Contracts of Employment along with job descriptions.</li><li>• A full record of each person's employment history.</li><li>• Details of any disciplinary action taken or other special circumstances.</li><li>• PAYE records for the current period and the previous years if appropriate.</li></ul>	<i>All as available, and on cessation of management duties or 28 days after receipt of Notice whichever may be the later.</i>
<b>MISCELLANEOUS</b> <ul style="list-style-type: none"><li>• Details of any guarantees.</li><li>• A full set of labelled keys, any spares and access codes and programming procedures.</li><li>• Copies of unanswered correspondence and other relevant enquiries.</li></ul>	<i>All as available, and on cessation of management duties or 28 days after receipt of Notice whichever may be the later.</i>
<b>HEALTH AND SAFETY</b> <ul style="list-style-type: none"><li>• Copy of any Risk Assessments carried out.</li><li>• Copy of any accident records.</li><li>• Copy of any asbestos register.</li><li>• CDM file if appropriate.</li></ul>	<i>All as available, and on cessation of management duties or 28 days after receipt of Notice whichever may be the later.</i>
<b>COMPANY INFORMATION</b> <p>[Where a Resident Management Company is the client - and subject to arrangements over the Company Secretarial role.]</p> <ul style="list-style-type: none"><li>• Copy of Memorandum &amp; Articles of Association.</li><li>• The Legal Books including minutes, stock transfer forms, Certificate of Incorporation, seal etc.</li><li>• Copies of previous annual returns.</li><li>• The last six years' (audited) accounts.</li><li>• All financial records and supporting documentation for the last six years.</li><li>• Details of accountants/auditors used.</li><li>• Details any Directors and Officers Liability Insurance.</li></ul>	<i>All as available, and on cessation of management duties or 28 days after receipt of Notice whichever may be the later.</i>