FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LAM/2019/0026** **LON/00BK/LSC/2020/0134**
HMCTS Code	**:**	**CVP Remote Hearing**
Property	**:**	**10 Eaton Place, London SW1X 8AD**
Applicant	**:**	**Mrs Shirley Elizabeth Scott**
Representative	**:**	**Mr Mark Warwick QC instructed by Farrer & Co LLP**
Respondent	**:**	**Ten Eaton Place Freehold Limited**
Representative	**:**	**Mr Michael Ranson of Counsel, instructed by Dewer Hogan Solicitors**
Type of Application	**:**	**(1) An appointment of a Manager** **(2) Application for determination as to the reasonableness and pay ability of service charges pursuant to section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Tribunal Judge Dutton** **Mr C P Gowman MCIEH MCMI BSc** **Mr J E Francis**
Date and venue of Hearing	**:**	**Remote Hearing on 2nd to 6th November 2020**
Date of Decision	**:**	**14th December 2020**

DECISION

COVID-19 PANDEMIC: DESCRIPTION OF HEARING

This has been a remote video hearing, which has been consented to by the parties. The form of remote hearing was CVP Video. A face-to-face hearing was not held because it was not practicable and no one requested same and further that issues could be determined in a remote hearing.

The documents that we will refer to are in bundles of documents running to in excess of 1,400 pages.

DECISIONS OF THE TRIBUNAL

1. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (the Act) Mrs Alison Mooney of Westbury Residential Limited of Suite 2 De Waldon Court, New Cavendish Street, London W1W 6DX is appointed a manager of the Property at 10 Eaton Place, London SW1X 8AD (the Property).

2. The order shall continue for a period of two years from 1st February 2021. Any application for an extension must be made prior to the expiry of that period. If such an application is made in time then the appointment will continue until that application has finally be determined.

3. The manager shall manage the Property in accordance with the management order annexed hereto and shall register the order against the landlord's registered title as a restriction under the Land Registration Act 2002 or any subsequent Act.

4. An order is made under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs before the tribunal shall not be added to the service charges.

5. In respect of the application under section 27A of the Landlord and Tenant Act 1985 the Tribunal makes the orders set out below.

BACKGROUND

1. This case relates to two applications brought by Mrs Scott. The first is for the appointment of a manager and the second relates to service charges, which are in dispute under the provisions of section 27A of the Landlord and Tenant Act 1985 (the 1985 Act). In respect of these issues, the only question for us to determine relates to the payability of legal costs there being no other service charges that are now in dispute. We will return to that element in due course.

2. The Property is a Grade II Listed early 19th Century town house in Belgravia. The freehold is held by the Respondent, Ten Eaton Place (Freehold) Limited, hereinafter called the Company. The Applicant, Mrs Scott is a lessee of Flat 2 under a lease dated 20th November 2015. The other lessees are Audley Group Holdings Limited, a director of which is Miss Noor Bakshi, who also holds under a lease dated 20th November 2015 and Flat 3 held by Alessandro Gatto and Isobelle Resta, again with a lease dated 20th November 2015. Flat 1 is on

the sub-basement and ground floor of the Property. Flat 2 is on the first and second floors and Flat 3 on the third and fourth floors. Between 2012 and 2014 works were carried out to Flat 1 to create the sub-basement.

3. Some history in respect of the Property is worth noting. Until 20th November 2015 the Property was owned by the Grosvenor Estate. In about 1979 Mrs Scott acquired a along lease of Flat 2 and she has lived there ever since, although spending her time between this Property and her home in Monaco.

4. Sometime before 2012 Audley acquired Flat 1 and this is the home for Noor Bakshi. Originally the flat had been bought through a BVI company called La Brecque Group Limited. Title was subsequently transferred to Audley Holdings of which Miss Bakshi is a director. She spends her time partly at the flat in London and partly abroad in India and Dubai.

5. In 2012 Mr Gatto and his wife acquired their interest in Flat 3 where they live.

6. It appears that in 2013 the three individuals were interested in acquiring the freehold from Grosvenor. The Company was incorporated in May of 2013 for that purpose and the original shareholders and directors were the previous owner of Flat 1, Mr Beckwith-Smith, Mrs Scott and Mr Gatto. On 1st October 2015 new articles were adopted for the Company, which provided for each owner of a flat to take a share and to be appointed as director. The articles created a majority rule provision. In November 2015 purchase of the freehold was completed and new leases were granted to the three flats by the respondent Company, each for 999 years with no premium and at a peppercorn rent. We are told the terms of the leases are comparable.

7. Initially, Burlingtons were appointed as managing agents for the Property and were asked to remain for a further year, it seems by Mrs Scott in November 2016.

8. During Burlingtons tenure work was started on the refurbishment, both internally and externally of the Property, which it is accepted by all parties was needed fairly urgently. However, the extent of the monies to be spent in carrying out such works could not be agreed and at some time during 2017 Miss Bakshi and Mr Gatto joined forces and on the basis of their majority resolved to instruct Susan Metcalfe Residential (SMR) in place of Burlington from November of 2017. SMR then undertook steps to prepare for works to the interior and the exterior of the Property but these could not be agreed between the three leaseholders and as a result an impasse has been reached.

9. At some time in 2019 Maunder Taylor Surveyors were instructed to prepare a notice pursuant to section 22 of the Landlord and Tenant Act 1987 (the 1987 Act) for the purpose of appointing a manager under section 24 of the 1987 Act. It is this application for the appointment of Mrs Mooney which brings this case before the Tribunal.

10. On the question of service charges under section 27A of the 2015 Act as we have indicated above, these relate purely to legal costs. The basis of the challenge is to determine a principle as to whether or not the Respondent will be entitled to

recover the costs of defending the appointment of manager application and presumably the section 27A application and recover those costs by way of service charge. The Applicant, Mrs Scott says they are not entitled to do so and that the lease does not allow it, the Respondents say they are entitled to do so and rely in part, upon the fact that during Mrs Scott's involvement in the management of the Respondent a small amount of £2,235 in legal fees was paid, it is said with her approval. That is denied by Mrs Scott. The basis of the Applicant's claim in this regard is that the lease does not allow the recovery of legal costs and support, it is said, is found in a number of cases to which we will return in due course.

11. We were provided with a vast number of documents, in excess of 1,500 pages. Bundle A contained the witness statements of the applicant x 4' the wtiness statements of Mr Gatto x2 and Miss Bakshi x2 as well as statements from chartered surveyors, Mr Murton for Mrs Scott and Mr Aston for the respondent and statements from Mr Dixon of SMR. In addition, there has been substantial correspondence between Mrs Scott's solicitors, Farrer and Co and the solicitors instructed to act on behalf of the Respondent.

Hearing

12. This case was listed for five days. On the first morning Mr Warwick took us through his well-covered skeleton argument, chronology and details of the relevant parties. We are very grateful to Mr Warwick for these papers, which were of assistance to us. We do not propose to go through those documents in any detail as they are common to the parties but we have borne in mind the contents. Mr Warwick took us through the numerous documents, which were relevant to his case, and as and when necessary we will refer to those in our decision.

13. The basis of Mr Warwick's submissions was that it is just and convenient to appoint Mrs Mooney as a manager. There are no real disputes between the parties as to whether or not the provisions of section 24(1) have been met. There are accepted breaches of varying degree on the part of the Respondent and we are grateful to Mr Ranson for taking a pragmatic approach in this regard and confirming that the 'just and convenient' provisions as set out section 24(2)(b) are those that we are required to consider in this case. In that regard it was Mr Warwick's submissions that SMR had failed to operate the section 20 procedures under the 1985 Act, had misunderstood or misapplied reserve funds as provided for in the lease, had provided confusing sets of service charge accounts, dealt with Mrs Scott differently to the other directors and had lost the confidence of Mrs Scott. It was said that on behalf of the Respondent they had delayed works which should have been given the go ahead some time ago and had put the financial interests of Mr Gatto and Miss Bakshi above the lease obligations. It was also suggested that fixing a reserve fund at £3,000 per annum was unreasonable and in the view of the Applicant the Property required an external manager, certainly for the life of the proposed works.

14. On the cost issues, the main concern for Mrs Scott was that she may be required to make a contribution towards the Respondent's legal fees in respect of the

appointment of manager application. It was said that the lease makes no provision for legal costs to be recovered and we were referred to the Court of Appeal case of Sella House Limited v Mears (1989)021 HLR147) and the Upper Tribunal case of Geyfords v Ms O'Sullivan [2015] UKUT 683(LC).

15. Mr Warwick also raised with us a new allegation put forward by Mr Ranson, namely estoppel by convention, which had not appeared in any of the documents prior to this hearing. Mr Warwick said that this was contrary to the directions given and in any event was not relevant. There was also a flurry of activity over some late evidence included in what is called bundle C. We heard all that was said on it but our view was at the time that the provisions of Rule 3 and Rule 6 of the Tribunal Procedure (First Tier) (Property Chamber) Rules 13 allowed us to agree that these documents may be put before us and we consider that they may be useful in assisting us to reaching a decision.

16. Mr Ranson also made a short opening. As had Mr Warwick Mr Ranson provided us with a very helpful skeleton argument which as with Mr Warwick's documents we noted and are for which we are grateful.

17. The 'crux point' from the Respondents position is the control of the Company. He reminded us not to overlook the importance of the section 22 notice, that being the basis upon which the appointment of a manager was advanced. In respect of the section 27A application he drew to our attention that this had initially been advance on expansive grounds but what was left now was only for the recoverability of legal fees. Although the question of the reserve fund has arisen, Mr Ranson said that it was not mentioned in the section 22 application. He did concede that it is common ground that there have been breaches of the lease and the RICS code although not necessarily serious breaches and therefore the question that we needed to consider is whether it would be 'just and convenient' to appoint Mrs Mooney.

18. From the Respondent's point of view, it is said that on the basis of Mrs Scott's conduct it would be neither just nor convenient to appoint a manager. He confirmed with us that in the Respondent's views the issue in respect of the legal costs was not on quantum but whether or not they are recoverable. Reference was made to the Sella House case but in addition comfort could be found for his submissions in the Upper Tribunal case of Conway v Jam Factory Freehold Limited [2013] UKUT 592(LC). He accepted that the estoppel point had not been raised before but he was of the view that it was useful to look at the way the parties had dealt with how legal fees had been paid in the past.

19. After these submissions we then heard from the parties. The first to give evidence was Mrs Scott. She had made four witness statements, the first on 20th December 2019 and subsequent ones dated 24th February 2020, 16th June 2020 and the final one on 8th October 2020, all of which we have considered.

20. In her witness statement she had estimated that the value of her flat to be be in the region of £4m and it was put to her that the other flats would have similar values, which she did not deny. She accepted that the Respondent owns nothing, but the building and its sole function is to be the landlord. During the course of her cross examination she was taken to a number of documents, the

first being an email from Richard Garland of Gradient Consultants Limited, Chartered Building Surveyors and Property Consultants. In this communication it recalls the meeting that he had with the Applicant and previous owner of Flat 1 and sets out a breakdown of the proposed works for the external and internal common parts refurbishments with a budget of £125,000, having a build budget of around £90,000. This email also raises the suggestion that Burlington Estates may be suitable managing agents. This document shows that certainly from 2014 the parties were aware that works were required to the exterior and the common parts.

21. It appears that years go by, for reasons that were set out in Mrs Scott's witness statements, but that in December of 2019, although there is some dispute as to the timing, a specification was sufficiently acceptable for her to be able to put forward her nominated contractor to tender for those works. This specification, which we will refer to later, is entitled The March 2020 specification.

22. Asked why she had suggested Mrs Mooney as manager she told us that she had been recommended to her by Maunder Taylor. Her attention was drawn to Mrs Mooney's documentation in which Mrs Mooney outlined the steps that she thinks would be required to deal with the management of the Property, which included it would seem, starting afresh with an inspection of the building, condition report, although utilising the existing draft specification of works. However, it would be the intention of Miss Mooney to ask an independent surveyor to review and make observations. It was put to Mrs Scott and that this would take time and was unnecessary. She however was of the view that if the manager wanted to remove contention and instruct a new surveyor that was a good thing.

23. She was asked questions about the section 22 notice but confirmed that she had not drafted this and said it had been undertaken by Maunder Taylor. Asked about her relationship with Giles Oliver she said that she had known that company for 30 years and indeed were key holders to her flat. She accepted that the building had been in a poor condition and was when Mr Gatto moved in in 2012. She thought that the building has deteriorated since then. It was put to her that Giles Oliver had been put in in funds to provide a carpet but that no such carpet had been provided. Mrs Scott knew nothing of this. It was put to her that Mr Dixon of SMR was aware. Questions were then asked about asbestos, fire risk assessments, signage and the fire authority letter dated 29th March 2017 which indicated that following an inspection of the Property there were certain fire issues that required attention. This letter it appears had arrived during Burlington's period as managing agents.

24. There then followed cross-examination concerning correspondent emanating from Farrer & Co and her understanding of the unanimity point. She confirmed that she had been a director at all material times and her concern was that the Company, the Respondent, appeared to be run by two directors to her exclusion. She did accept that at all times two directors could control the Company and therefore there was never a need for unanimity. Her concern was that she wished the building to be brought back into proper condition so that if someone wanted to sell their flat, then they could do so. She was of the view that a Tribunal appointee would enable the works to be put in place.

25. She accepted that she had never called a board meeting to discuss the appointment of a manager and it was put to her that the truth of the matter was that if she could not exercise a veto then she wanted the Tribunal to step in to deal with the matter by way of a Tribunal appointed manager. Her response was that she wanted the Property put into good condition.

26. She was asked about the appointment of Burlingtons which had been agreed with the previous owner of Flat 1 but that it had been extended by her it was said without any consultation with the other leaseholders. It was said there was no board meeting but that as far as she was concerned no one was unhappy with Burlingtons and she saw no need to call such a meeting. The agreement appointing Burlingtons for a further year from 20th November 2016 was put to her and, in particular her signature, which provided for her to delete certain standings such as director duly authorised to do so, partner etc. Nothing had been deleted. She did not think that she needed to do so and felt that she had authority to sign the document as everybody seemed to be happy with the appointment of Burlington, at that time.

27. It was put to her by Mr Ranson that during the period 2015 to 2017, which he called the Burlington years there had been problems. There had been a leak at the Property, although that appeared to have been caused by Mr Gatto's washing machine, and there were discussions about the undertaking of consultation works by Burlington which included the submission to Mr Gatto, Mrs Scott and it appears Miss Bakshi's brother of specification and external decorations for the Property in July of 2016. This was followed in November of 2016 by a notice of intention to carry out works under section 20 of the 1985 Act which listed five contractors, one of whom was Giles Oliver. The lowest quote was provided by Rosewood Construction. This showed the cost of works at £196,530 plus surveying costs and VAT lifting the total cost to £271,211.40. The highest quote was from a company called Palmer Woods where their total figure was £389,059.26.

28. This section 20 was compared to that which had been issued by SMR on 24th January 2020 showing a range of £169,459 in respect of the costs of the works from a company called Just Does It Limited to the quote from Giles Oliver Limited, the Applicant's preferred contractor, of £283,216. These were subject to uplift for fees and VAT.

29. Mrs Scott said that she first became aware that the other directors were unhappy with the proposed costings when emails were sent in December 2016 to Miss McGrandles of Burlingtons by Mr Gatto saying that the maximum budget that he would be happy with including all costs, VAT and fees was £35,000. This was approved by Miss Bakshi in an email of 13th December 2016. This elicited a response from Mrs Scott copied to her fellow directors expressing concern at the sums suggested and indicating that the suggested budget would not be sufficient to cover the costings. It was around this time that Mr Gatto first put forward a company called Magic Builders who had carried out works on his own flat and had it seemed provided a specification for the works at the Property in October of 2014. This appeared to confirm his view that £105,000 would be sufficient for all works necessary to the building including internal

decoration. It is really at this point that matters appeared to break down between the parties. Mrs Scott's attention was then drawn to a letter sent by Mr Gatto to the directors of the Respondent dated 28th February 2017 responding to an earlier letter from the Company indicating a wish to call a meeting to remove Burlingtons and to replace them with another managing agent. She was asked about the appointment of SMR as the agents following the removal of Burlingtons. She felt that they had no experience of managing a building such as the Property. Nor did she think that they did the job properly, although she was open minded until she did some research. She said she was never hostile, was never rude nor argumentative but was disappointed in the quality of the agent, which was in her words imposed on her. She was taken to the terms of the lease which relates to the appointment of a manager at the landlord's discretion and she was of the view that as an original tenant she did try to negotiate matters but was unable to persuade the others.

30. She was then asked about an invoice for legal fees from EMMS Gillmore Liberson Solicitors which is recorded as a final invoice in connection with advising in respect of titles to the flats, service charge and reserve fund contributions taking into account the lease extensions and works of extension to one of the flats. This invoice is dated 10th January 2017 and is in the sum of £2,235. This is the invoice which forms part of this section 27A dispute. It was put to her that she had commissioned this legal advice but she denied it, although she was drawn to a document prepared by Burlington showing this as a recharge to her. She maintained she had no knowledge as to who commissioned these costs but certainly she said it was not her. She was asked why she had paid the last service charge in full, which included these legal fees. She indicated that she had not been aware of this until she thought that the Respondent might be spending tens of thousands of pounds in legal fees in respect of these disputes.

31. At this point in time Mrs Scott had been cross-examined for in excess of two hours and the matter adjourned until the next morning. At that reconvene Mrs Scott confirmed that she had seen a tender prepared in 2020 referred to as the March 2020 tender. There then followed some questioning concerning the enfranchisement, the setting up of the freehold and the advice that she may have had at the time of signing the lease. It was put to her that she was actively trying to stop the works taking place as evidence to support her section 22 application. She denied this. She was asked why she had gone on a "service charge strike" but had made the payments in May in 2019 at the time that the section 22 notice was issued. It was put to her also that she had not paid further service charges since March of 2020. The minutes of a board meeting held on 29th January were then put to her, that these appear to have been transcribed by a transcribing service and was said to be completely accurate except where the transcribers could not understand what had been said. There was concern expressed about the fees being charged by SMR for the proposed works, said to be something in the region of £7,000, that Mrs Scott was not happy with. Further she was reticent about putting any funds to SMR whilst the Tribunal proceedings were underway with an anticipated hearing, at that time, in February and March of 2020. It was suggested that each director should put £60,000 into SMR's account so that the works could go ahead but Mrs Scott

was unhappy to do that until the Tribunal had ruled on who was going to be the managing agent to take over the projects.

32. It was then put to her that the involvement of Farrer & Co who wrote various long letters, over a period of time, had resulted in matters being delayed. It was said to her that their involvement was at her bidding and intended to delay matters. An example of this it was said was the letter of 15th June 2018 by Farrer & Co to SMR in which they make a request under article 15 of the General Data Protection Regulation concerning alleged correspondence with the directors of the Company concerning Mrs Scott and sent without Mrs Scott's knowledge. It was said that this was intended purely to distract SMR from their work. She denied this and said that she believed that they were discussing matters with other directors to her exclusion.

33. It was suggested that she had chosen not to participate in the Company management or indeed with the investigation into works required to the Property. Her response was that Mr Gatto and Miss Bakshi had made decisions without her involvement, including the appointment of SMR, the appointment of Mr Ashton as surveyor, all without her involvement. She also indicated that she had not been notified about meetings, nor the appointment of Child & Child as solicitors in relation to these proceedings. It was put to her that another example of the involvement of Farrer & Co and delaying matters was a letter sent on 13th May 2020 raising issues about the reserve fund and alleged misuse, as well as an allegation that Child & Child the solicitors had been paid wrongfully from the reserve fund monies. This was not in fact an allegation that was subsequently pursued. It was said, however, that this was an example of solicitors using bullying tactics. The cross examination continued in this vein alleging that Mrs Scott was really doing nothing other than trying to create delays. It was put to her that she was never going to be willing to let the works happen before this Tribunal had made a decision on the appointment of a manager but she denied she was responsible for the delays and accepted that it had long been known that major works were required and that she would be required to pay one third of the costs.

34. It was asked whether the non-payment of service charges was an act of sabotage, but she denied this. She was asked whether the only thing that would result in her paying money would be the appointment of a manager by the Tribunal to which she agreed. It was put to her that SMR were perfectly good managing agents. She considered they were poor. She said she did not like the building run by managing agents who run it as if cost cutting was the important element. For her part she said she could not care who was the managing agent but wanted them to be competent and up to date with the law and to provide accurate accounts. She did not consider SMR to be competent. She said she wanted a professionally qualified manager and did not think that SMR understood her rights under the lease.

35. In re-examination she was asked about the tender process and the research she had undertaken in respect of some of the companies that were included on the SMR section 20 notice of quotes. Her view was that some were a single director, for example Pall Mall from Yorkshire and Pickton Green who had a director from Suffolk. Loft Creations had been dissolved, Giles Oliver was known to her

and Just Does It she thought was also a micro account with one director. Her reasons to applying to the Tribunal was that it was the perfect mechanism for solving the problem about the standard of the managing agent and the difficulties that had arisen. She reiterated that Mrs Mooney was not known to her but had been recommended by Maunder Taylor.

36. After we heard from Mrs Scott Mr Murton gave evidence. He provided a witness statement which was in the bundle and as with Mrs Scott's evidence we have noted all that has been said. Mr Murton is a partner at Styles Harrold Williams Partnership LLP (SHW) and a member of the Royal Institute of Chartered Surveyors having qualified as such on 1st January 2000. His witness statement set out the background to the firm, details of the Property and his initial concerns in respect of the specification produced by Michael Ashton Associates (MAA) in November 2018. His witness statement went on to deal with a number of issues in respect of that specification and confirmed that in August of 2019 he had a joint inspection of the Property with Mr Ashton. It seems a number of points were agreed and a second specification in September 2019 was produced but this still was not to Mr Murton's satisfaction. Thereafter a third specification was produced by Mr Ashton in November of 2019 accompanied with an asbestos report. Mr Murton confirmed that the 2019 (Nov) specification was generally acceptably although he did point out that it had been two years since he had first visited the property and he found it extraordinary that the length of time and the number of specifications that had been issued before an acceptable one had been produced. As to the contractors invited to quote, he was not familiar with any other that Giles Oliver who was nominated by Mrs Scott and noted that some of the contractors were not London-based he thinking that the works would have carried out by an experienced specialist contractor.

37. He was asked questions by Mr Ranson and was taken to the specification produced in November of 2019. This is indeed dated November 2019 prepared by Michael Ashton & Associates relating to the Property and is a detailed specification of the works required. Mr Murton confirmed that he was happy with the document, although there were still some shortfalls. He was asked whether he thought a third surveyor was necessary to check this November 2019 specification and he thought not. His view was this was a simple project and should have taken months only to resolve. He confirmed that a letter written by Farrer & Co on 24th February 2020 had been in part had his input. As to the involvement of SMR he thought they were doing more than one might have expected a managing agent to undertake at this stage. One area of contention, as set out in the letter from Farrer & Co was that the tender reports did not state a date upon which they were to be received and it was confirmed that Michael Ashton had set out the return date as 6th January 2020 but extended to 10th January at the request of SMR. It is not wholly clear what point was being made by this because it seems that the Giles Oliver tender was dated 9th January 2020 and the Just Does It tender appears to have been dated on 10th January 2020. All tenders therefore seem to be around the 9th and 10th January 2020 and the cut off date referred to by Mr Murton seems not to have been followed. He was asked whether he had any knowledge of Giles Oliver and the apparent missing carpet, but he could not assist. He also confirmed that the contractor would not have to be London based.

38. There was some confusion as to the dating of the tenders and specification. Mr Dixon in an email to all concerned attached copies of the specification provided to them by Mr Ashton on 2nd January. The email went on to say that tendering was proceeded with in the previous year. When asked about this by Mr Warwick, Mr Murton thought it would be not possible to submit tenders without a specification and further that references in respect of the parties tendering would not have been undertaken without due diligence and financial checking. He did, however, again confirm that the November specification was generally acceptable.

39. Asked about the document dated March 2020 which is the revised tender report based upon the November 2019 document, he confirmed that although it fell short of some standards, he would not consider it to be inappropriate. He did, however, think that the works would require a lot of management and that Mr Ashton would need to have regular meetings with the contractors and to keep minutes to confirm provisional sums and up to date works and also to ensure that the latest legislation was considered.

40. After the luncheon adjournment we heard from Mrs Alison Mooney of Westbury Residential, the proposed manager. She had prepared a witness statement, the contents of which we have noted. It provides a background as to her membership of the Institute of Residential Property Managers and as an Associate of the RICS. She confirmed that she was a former British Property Federation award winner and has spent several years as governor of the Institute of Residential Property Management.

41. The statement set out her experience generally and of the four management appointments she had had with the First Tier Tribunal. She confirmed she had visited the Property on two occasions in 2019 and that she now had a proposed management plan and had produced a draft order.

42. Tendered for cross-examination she confirmed that her endeavour was to bring the parties together and not to take sides. Asked about her partiality she said this was confined to the inspection of the building and the fact that she had been approached by the Applicant's solicitors. She confirmed that she was aware that the Applicant was a director of the Respondent Company and of the memorandum and articles of association. Photographs had been produced by her and she confirmed that these were a fair and accurate representation. She was asked whether at paragraph 12 of her statement she had exaggerated the matter by her comments that "the common parts are among the worst I have ever seen." She said that was not an exaggeration. She was questioned as had Mr Murton about Giles Oliver and the fitting of carpets, but she knew nothing about that. In any event she said, it would not make sense to fit a new carpet until there had been internal decoration carried out.

43. She confirmed she had not met with Michael Ashton, but she can see no reason why he was not a competent surveyor assuming the qualifications that he had.

44. In her witness statement she had said that she would be instructing a suitable surveyor to review matters. She confirmed, however, that her intention would

now be to liaise with Mr Ashton and resolve any issues that required to be resolved. She was aware of the tender included in the final bundle C in March of 2020 and was of the view that it would be essential to proceed as quickly as possible. Asked about SMR she said that it was not her role to criticise another managing agent. She did indicate that prior to making the witness statement she had met with Giles Oliver and also the representative flat 1, although had not seen Mr Gatto or Ms Bakshi. She had, however, tried to meet all directors although she had not in fact spoken to Mrs Scott as the introduction had come via her solicitors. She was aware the building was in a dreadful condition and stated that if she had been in charge of the management it would not be in that condition.

45. In cross-examination she was challenged about SMR's administration fee of £7,500 which he thought would be too great. She said her charge would be 2% for works under £50,000 and 1% for works over.

46. She confirmed that she felt she would be able to work with Mr Ashton and that she had understood the contents of the lease.

47. We then asked certain questions about her proposed management. She confirmed that she had four Tribunal appointments, two were in north London. She felt she had a very good back up team and attended London on a regular basis. Asked about the period of time for her appointment, she did think two years would be sufficient given the specifications already in place. We were told that there were IT facilities that they would be able to use as they had now joined forces with another company called Ulang. There was out of hours cover and that there would be visits to the Property at least once a month. Asked whether she thought any money on account would be required she it would and put a figure of £20,000 on that. That sum would be to carry out initial works including health and safety and day-to-day management. She confirmed they did have a panel of contractors and as far as insurance was concerned that was carried out through a couple of brokers either St Giles or Locktons. She was not sure, however, whether the Grosvenor Estate might carry out the insurance provisions.

48. Following these questions Mr Warwick confirmed that that was the extent of the evidence on behalf of the Applicant.

49. The first witness we heard from on behalf of the Respondent was Mr Alessandro Gatto who lives at Flat 3 with his wife. In his first witness statement he told us that he had purchased that flat in November 2012 when the landlord was the Grosvenor Estate. He confirmed that he and his wife were the only residents at 10 Eaton Place who occupied the Property throughout the year. At the time of his purchase the communal parts and the exterior appearance of the Property was "shabby and in poor condition." His view was that any disrepair of the Property was as a result of the long history of inaction on the part of Grosvenor Estate. He confirmed that in November 2015 new leases were issued, 999 years, following the purchase of the freehold from Grosvenor.

50. As to the management of the Property he confirmed that in around March of 2014 Burlington Estates were first introduced and at the time he supported

their appointment as a managing agent. He was content with that appointment. He was critical of Burlington Estates inaction during their 15-month period of managing the Property and referred to an issue with leaks which were running through the communal area. He was concerned that it had taken them some time to resolve this.

51. He accepted that at one point he had mentioned a maximum figure of £35,000 per person for the works but in his witness statement said this would not have included the cost of materials. This he said was not so far off the lowest quote that had been received in December 2016 of £118,000. He said that he had some experience of carrying out external and interior remedial works in respect of properties he owns elsewhere in London.

52. In the letter of 28th February 2017, referred to before, he set out his various concerns with the management of Burlington Estates and in due course having used SMR in relation to another property he owned in South Kensington, he approached them to replace Burlingtons. A board meeting of the directors was called and SMR were appointed. His statement went on to refer to the correspondence that passed between solicitors instructed for the Respondent and for Mrs Scott. He was concerned that Mrs Scott had not sought to call a board meeting to have discussed the matter in a "civilised manner." Instead, he felt her solicitors engaged in confrontational correspondence. He then went on to deal with the service of the section 22 notice and matters surround that and then the appointment of Mr Ashton as a surveyor to deal with the major works. By now this was in the summer of 2019. During this period of time the section 22 notice was sent by Mrs Scott. His statement then brought us up to date with respect to the position on the tender and the intention in respect of the major works.

53. In a second witness statement made on 28th October he sought to update the Tribunal on the events since February of 2020. The witness statement purported to deal with Mr Ashton's report and his view of it and criticisms made of it by Mr Murton, which he responded to in some detail. We noted all that was said. A board meeting was held on 14th April 2020 when discussions followed concerning the quotations and due diligence in respect of the various companies put forward. Discussions were undertaken in respect of the pandemic and the ability of the companies to carry out the works.

54. A further directors meeting by telephone was conducted on 15th May 2020 but he says that the Applicant refused to engage in conversation.

55. He states in his statement that his concern had been that the building should be repaired at a reasonable cost. Burlington figures had varied from £271,000 to £389,000 and both he and Ms Bakshi were concerned that these costs were now too high.

56. His reasons for not wanting a manager to be appointment was that the savings they would achieve would be lost by the incurring of more costs and secondly the reason for acquiring the freehold in 2015 was to put the residents in a position where they could manage their own affairs. He then went on to deal with allegations concerning the reserve fund which we have noted.

57. He was then asked questions by Mr Warwick.

58. He confirmed that he had viewed the flat before purchase, as well as the house and had been told by the estate agent that the building required refurbishment and repair. Apparently, he had negotiated a reduction in the asking price. He confirmed that the Respondent Company had been formed in 2013 and that he had been a director at the time. The Company had been formed with a sole purpose of acquiring the freehold. He confirmed that initially he had a good impression of Burlington Estates and although it was Mrs Scott who signed the contract in respect of the employment of Burlington Estates he agreed with their involvement.

59. It was taken to the minutes of a meeting held on 21st March 2014 at the Property where he was present together with Mrs Scott and Mr Beckwith-Smith, the occupier of Flat 1. This meeting agreed that the work would be broken into two categories, exterior and interior. Once a list that had been produced had been reviewed a quantity surveyor would be requested to comment on the budget and the programme for works. It seems, however, that the first specification that Mr Gatto saw was not until July of 2016. In the interim period the Respondent Company had acquired the freehold and new leases had been granted. On 20th July 2016 it appears that a specification or rather schedule of works prepared by Ridge was sent to all interested parties. By an email of 21st September 2016, it appeared that Rosewood Limited were the favourites to undertake the works. Mr Gatto's view was that the Property was a Grade II Star Listed and needed specialist contractors. He confirmed that he had viewed the tender report but that his experience was not in building rather in banking. He agreed that he could have taken advice but had not done so. It appears that a further meeting took place with BE in December when matters were discussed. The BE contract was coming to an end, but this was renewed buy Mrs Scott without informing the other directors. Asked about the position of BE, he confirmed that he was happy for them to continue but the complaint was that Mrs Scott had not consulted with him.

60. It was following a meeting on 12th December 2016 that he sent a letter to all concerned setting out three points namely that the internal and external decoration should be done at the same time, that the quality of work should be very high and the maximum budget including all costs, VAT and fees would be £35,000. Asked why he had picked on this figure he said that a neighbouring property was being worked upon and he had met the building who had given an indication of the cost of doing the subject property would be between £100,000n and £150,000. Also, he had lived in London for some time and knew colleagues who had had similar work carried out. Asked whether he had more than £35,000 to put towards the costs he confirmed that he did. His view was that in putting a budget of £35,000 this would encourage BE to find a solution to the works based on that estimate. He considered it would be up to BE to go to the contractors to try and get the works completed within that budget or near to it. He did not think they had done so. He also felt that the overall costs of £105,000 was realistic and he had been guided in this by the costs of the internal decorations to his flat.

61. It was 23rd February 2017 that it appears Farrer & Co first became involved setting out their concerns in some detail on behalf of their client. He responded to this letter on 28th February and raised the replacement of Burlington Estate. He was then asked questions as to the dating relating to the involvement of SMR and appeared to indicate that it was not until a meeting in November that a vote was formerly taken appointing them, although a meeting had taken place with all lessees on 3rd March 2017 when the replacement of BE was discussed. The minutes record that the quotes obtained by Ridge and BE were high and did not appear to deal with a quote from Magic Builders. This is a company put forward by Mr Gatto. Mr Gatto was asked questions about Magic Builders and the correct spelling of the company as it appeared that company had dissolved in 2018 and was not financially secure. Mr Gatto accepted that when he did carry out some research they were not in a good financial situation and he accepted that Magic would not be a suitable contractor.

62. A further lengthy letter from Farrer put forward certain proposals but solicitors newly instructed by Mr Gatto and Miss Bakshi rejected those. It was put to him that the range of quotes from Ridge was between £196,000 and £281,000 but when one looked at the quotes obtained from the amended tender in January 2020 the range was £169,000 to £309,000 all costs however being exclusive of VAT and professional fees. The difference between the two is some £40,000 excluding fees and VAT. He was asked why they were litigating for this amount. One area of concern Mr Gatto raised was that the surveyor's fees seemed to be high. He was then taken back to the appointment of SMR. He confirmed that that had been appointed on the same basis that BE were appointed, that is to say by a majority. He was asked about the leak that he had raised in his witness statement and it transpired that this in fact had come from his own washing machine. This he said was evidence of BE's slowness of dealing with the matter which should be contrasted with SMR acting quickly in respect of a subsequent leak.

63. Questions then moved on to the reserve fund and the small amount suggested as being appropriate by SMR. It seems that the amount of £3,000 had been suggested by a representative of SMR at a meeting of directors on 31st January 2018 and Mrs Scott had expressed surprise at the low amount. Mr Gatto confirmed that at the meeting by a majority they agreed that £3,000 be put aside. Asked about this small amount he was of the view that he was aware that extensive works were going to be required and that costs would be needed in the future.

64. Asked about Asco, a contractor that he had also put forward to carry out the works, he said that they had been invited to quote but without a site visit although they were working at 8 Eaton Place. Mr Gatto was then taken to an email from D O'Meara of SMR to Mrs Scott's solicitor in which she apologised for the lack of detail being given and that matters had not been dealt with as efficiently as they should have been. This related to the section 20 notice which was re-issued on that day. Mr Gatto did not, however, agree that the Applicant was kept outside any decision making affecting the building. He said his own personal view was that when SMR were appointed Mrs Scott had started to complain about their work and that from January 2018 there had been problems.

65. It appears that SMR were contacted by the fire authority concerning electrical issues and there were also asbestos issues, which required attention, and which delayed progressing the major works. He was of the view that he did not think Mrs Scott would ever be happy and asked whether if that was the case it would not be better to get somebody from outside the building to deal with it. He appeared to agree. He was then taken to the minutes of the transcribed meeting where figures of £60,000 had been discussed and Mrs Scott's unwillingness to pay that money. There was apparently some discussion about a director's loan, but it did not go ahead. Instead, money was put into the Company by Mr Gatto and Miss Bakshi to cover the legal expenses.

66. On the question of legal fees and reserve funds, he was referred to a letter from Daniel Dixon to Mrs Scott of 28th April 2020 when reference was made to costs being settled from the reserve fund and a possible loan from the directors. Mr Gatto had not instructed Mr Dixon to write that letter.

67. Following Mr Gatto's evidence we heard from Miss Bakshi. She also had made two witness statements, one on 11th February 2020 and one on 16th October 2020. In her first witness statement she confirmed that she was one of the directors of the Respondent Company. She gave a history as to the ownership Flat 1 and the alterations carried out creating an additional basement, which had been under licence in about 2012. As a result of this licence the then company owning the freehold had been required to deposit £30,000 with the landlord, which fund would form security for that company's share of service charge liabilities for the exterior and interior redecoration works but would be refundable once a Satisfaction Certificate had been made available within two years of the works being completed. The deposit was held by Farrer & Co on behalf of the three parties. Her witness statement then set out in some detail her complaint that it had taken an inordinate length of time for Farrer & Co to release this deposit.

68. Her statement then went on to deal with her concerns about Burlington Estates and the appointment of SMR. Her statement also dealt with the major works and confirmed that at the board meeting in January 2020 she and Mr Gatto had expressed an intention to pay a third of the lowest tender price, but that Mrs Scott had refused to do so and that this meant that the matter could not proceed. She considered it somewhat ironic that Mrs Scott's refusal to pay caused this delay, which was one of her reasons for the application to the Tribunal. Miss Bakshi confirmed at the end of her witness statement that she was committed to working with Mrs Scott to progress the major works but did not think it appropriate for a management order to have been made.

69. Her second witness statement dealt with the payment of legal fees in the subject of the section 27A Application. The sum of £2,235 she said had been demanded in the 2017 service charge year when the management was in the hands of Burlingtons who, was the Applicant's choice. She understood that the sum involved related to an invoice from Emms Gilmore Liberson, which is a firm of solicitors that she had never heard of nor did she ever see any advice from them. She and Mr Gatto just accepted the accounts and paid them. Her view was that the reason for the legal fees being incurred was to obtain advice on behalf of the

Applicant to see if there was a way of forcing Miss Bakshi to pay a higher contribution in respect of her flat. She confirmed she did not give authority for these costs to be incurred. The second disputed sum relates to invoices paid to Child & Child acting on behalf of the Respondent in response to the application for the appointment of manager.

70. In answer to questions from Mr Warwick she confirmed that the Audley Group Holding Limited were successors to Labrecque Group Limited. She told us that the family had made the decision to purchase the flat and she had first visited when works were underway to the basement, which took some one and a half years. At that time, she had not taken any notice of the state of disrepair as her property was essentially a construction site. She said she first stayed at the Property in 2015 when it became her home. When she lived in the apartment it appeared that Mr Beckwith-Smith was still recorded as a director. She felt that she would want to become a director of the Respondent Company, but consent was not forthcoming from Mrs Scott. She then recounted the difficulties that she had had in obtaining the release of the deposit sum paid pending the works to the basement, which she thought was unreasonable. There was she felt far to much involvement of Farrer's in connection with the dispute and that matters could have been resolved amicably but for their consistent involvement.

71. It appears that she became director of the Respondent Company in November of 2016.

72. Asked more about the purchasing the Property she confirmed that it was her brother who had funded the purchase and the building works and asked how much had been spent on the refurbishment works she thought it unlikely that it was more than a million pounds. Asked about her ability to fund the works she said that would not be a problem. There was of course £30,000 being held by Farrer which should have been released. She was she said cost sensitive and wanted the right price for the right work, but she did not feel that she was being heard. She had put forward a company called Maison Blanche (UK) Limited, but they did not appear in the final tender undertaken at the beginning of 2020.

73. She was taken to the initial section 20 notice dated 9th March 2018 which had prompted a response from Farrer & Co as to its inadequacy. She said that Farrer sent letters about everything, which was costing time and money. They should have been able to agree matters as everybody wanted the best for the building. She considered that the Applicant was consistently obstructive and highlighted the attack made against Child & Child and the threats of proceedings. She considered that Mrs Scott was aggressive and obstructive and also highlighted that Mrs Scott had not paid funds into the service charge account until May of 2020.

74. Asked about Mrs Mooney she said her real objection was that she had indicated that she would redo the specification and tender. She now accepts that Mrs Mooney has indicated that she will consider the existing tender and specification and she confirmed that she would agree a change of the managing agent but did not want this to be on the basis of a Tribunal appointment as it would loose her ability to say what she thought should be done. She also wanted Mrs Scott to pay a share of the legal fees.

75. Following Miss Bakshi's evidence we heard from Daniel Dixon who is a residential property manager with SMR. He has made two witness statements, one is dated 11th February 2020 and the second dated 29th October 2020.

76. In his first witness statement he confirmed that he qualified from Canterbury Christchurch University in 2012 with a degree in Urban and Regional studies. He has worked for various managing agents in the London area and understood the complexity of Grade II Listed Buildings in particular in respect of the Grosvenor, Cadogan and Welcome Estates. He joined SMR in July 2018 where he has taken on the management of 25 developments located in the Royal Borough of Kensington and Chelsea and the surrounding area. As he did not join the Company until 2018 he told us he had relied on SMR's management files which told him that in November 2017 Mr Gatto had approached SMR with an invitation to manage the Property, they also managing a block of flats for Mr Gatto in Chelsea. The management agreement was executed on 30th November 2017 by Miss Bakshi and Mr Gatto. Under the heading General Management, he told us of communal lighting inspections and recommendations and an updating of the health and safety fire risk assessments. He also indicated that from the records it appears that Giles Oliver had issued an invoice and had been paid for some carpets but it did not appear that those had ever been supplied.

77. In respect of major works, he denied that SMR had ever been given any limitation on the costings by Mr Gatto and Miss Bakshi. He then went on to deal with the history of the service of section 20 notices and the appointment of Mr Ashton to carry out a preliminary inspection and review the specification of works of ASCO Design & Construction which had been obtained previously he said by BE. We were told that on 4th May 2018 the then manager left, and Ms D O'Meara took over the management. There is then some history as to the challenges made to the initial section 20 notice by Farrer & Co on behalf of Mrs Scott, which resulted in due course in SMR issuing an updated and more complete section 20 notice in June of 2018. He suggested that the delay in progressing the matter appeared to be down to Mrs Scott and her solicitors rejecting the initial notice of intention in March of 2018. There is a further complaint that Farrer & Co at around this time sent a letter requiring data protection information which it is said took a signification time and expenditure for SMR to comply.

78. These various steps, including an asbestos survey all were undertaken before Mr Dixon joined on 30th July 2018. In his witness statement he told us on the first day of working with SMR he arranged to meet Mr Chandler the inspection officer with London Fire Brigade and in fact met with him on 2nd August. He says as follows: *"It was apparent to me from the discussions with Mr Chandler that the Fire Brigade had received an anonymous request to inspect the Property."* There were however no issues arising from this that would not be resolved in the works to the Property under the major works contract.

79. In September 2018 he requested that Mrs Scott give consent to access to her flat with a building surveyor to inspect the rear of the Property. Certain requests were made as to identification and reasons, to which, he says he promptly responded. However, he said that did not produce the required consent. He

said on 17th October he made a demand from Mrs Scott in respect of outstanding service charge payments and when an email was sent on 24th October complaining that SMR had lost information concerning Giles Oliver the response was that the Applicant was by that date substantially in arrears of service charges and that as far as he was concerned the Applicant had never paid SMR service charges since taking over management from BE. Mrs Scott apparently responded on 24th October 2018 saying the arrears would be paid in full but also raising queries in respect of the major works. Mr Dixon told us that in the light of this correspondent and her failure to pay the service charges it was decided initially to limit these ongoing communications with Mrs Scott. There still appears to have been difficulties in obtaining access to Mrs Scott's property for the purposes of inspection and that in January of 2019 a further request was made. He then recounted about further correspondence received from Farrer & Co concerning works of John Wyatt who had prepared a structural report and other issues. This correspondence was referred to Miss Bakshi and Mr Gatto who in turn referred it to solicitors Ronald Fletcher Baker who responded.

80. On the management order application, he confirmed that the section 22 notice had been received and had been referred to Miss Bakshi and Mr Gatto for their instructions. He was subsequently informed on 30th May that Child & Child Solicitors had been instructed to advise the Respondent.

81. There then follows a recounting of correspondence relating Mrs Scott's service charge accounts and the accounts of business and that also WCJ Engineering returned to inspect the Property in September of 2019 a year after having carried out an earlier inspection. Photographs were taken which confirmed there were not significant changes to the cracking in the building. There then follows a history as to the specifications, his witness statement then summed up the problems that SMR say they had encountered with Mrs Scott. He indicated that the tone of Mrs Scott's email correspondence was hostile to SMR's involvement, and this animosity made it very difficult to manage the Property no matter how much they had sought to engage and accommodate her various concerns. He said he had never encountered this level of animosity from a client and he had stopped dealing with her.

82. His second witness statement produced just before the hearing centres on the payment of legal costs from the service charge accounts. He indicates that Mrs Scott's central complaint is because of misconceived view as to the reserve funds and the misunderstanding in the way at which Glaziers, the Company accountants had presented the information. Copies of bank statements for the reserve fund account for year 2018 and 19 were annexed in which he said you could see that no reserve fund monies had been used to pay legal charges. The only item paid out was Mr Ashton's fees. He dealt with the complaint that only £3,000 was put towards the reserve fund and we noted what he said. He then went on concerning Mrs Scott's suggestion that there had been a deficit in the service charge account. He said the deficit arose because of the Company's need to spend money on lawyers defending the proceedings which had not been budgeted for. He said this would be resolved with a balancing service charge but that that had not been done because he understood there was a dispute about whether legal costs were recoverable.

83. He then went on at paragraph 11 of this statement concerning Mrs Scott's complaint about the 2019 accounts and said this: *"Glazier's presentation is done in a way which is standard in the industry and which was adopted by Burlington and continued by us for which often has the effect of confusing tenants and solicitors (for instance the solicitors of incoming tenants who seek service charge information before purchasing) in the way which has happened here."* He did however concede that his email that he had sent in April was somewhat confusing. There was some discussion by him then on the question of a loan being made by Miss Bakshi and Mr Gatto in connection with legal costs. He did accept that Michael Ashton's fees paid in 2020 had been settled from the reserve fund without receiving Mrs Scott's specific written consent, which is required under the terms of the lease. He felt, however, that the Respondent had approved payment of these sums and therefore it was reasonable to make the payment and they had merely overlooked the provision in the lease requiring the consent from the lessees. Finally, he confirmed that Mrs Scott had not paid her service charges for July or September quarters of 2020.

84. Subsequently he was asked questions by Mr Warwick and confirmed that he did not have RICS qualifications nor had he dealt with an appointment of manager application before. He told us that the SMR file was computerised and that there were copies of leases for the Property, but he did not think any executive summary concerning the leases had been produced.

85. Asked about the staffing, he confirmed that Miss O'Meara was still with SMR and had been throughout the period and that he was subject to supervision by her. Asked whether he had had any contact with Mrs Scott he said that he had not. The first thing he did when he took over was to contact the fire authorities and then received correspondence from Farrer & Co. He never spoke to Mrs Scott. He had decided that as Mrs Scott had not paid her service charges, he would not communicate with her but continue to communicate with her solicitors. He indicated somewhat contrary to earlier comments that her tone in discussions with him had been appalling and that she had shouted at him. Her attitude he said formed his decision to stop communicating with her. He did confirm that he had consulted with Miss O'Meara about not communicating with Mrs Scott and that this was the only time that he remembered of having taken this course of action. This was notwithstanding the fact that in his earlier years he had dealt with housing association and other tenants. It seems that there was some communication between Mr Dixon and Mrs Scott not least the time that he spoke with Mrs Scott's husband having left a voicemail and received an angry phone call back complaining about him contacting her husband. They had also had conversations about providing access although there were no file notes respecting these matters. He told us he had last visited the Property some two months before and did not always make a written record of having done so.

86. Asked about the section 20 notice and the difference between that issued on 9th March 2018 which merely referred to internal and external refurbishments to the building and that dated 15th June which elaborated on works that were to be carried out in respect of both the internal and external refurbishment. He said

both were before his time. He was asked about SMR's administration fee which he thought was based on a capped percentage figure, which would have been discussed with the Respondent directors. Asked about Mrs Scott's involvement, he told us that he could not understand why she had been so hostile. Asked about his comments in an email of 24th April 2020 concerning legal fees and a loan being provided by the directors of the Respondent Company he confirmed this was an error. He also confirmed that no money for legal fees had come out of the reserve funds. He also stated that it was not his role to deal with the accounts, but he considered that Mr Ashton was the only person who had been paid from the reserve fund monies. He thought it was reasonable to do so but did accept that consent was needed.

87. After hearing from Mr Dixon, Mr Ashton gave evidence. He had prepared a witness statement dated 12th February 2020 the contents of which we noted. He confirmed in answer to questions by Mr Warwick that although the Company was called Michael Ashton Associates, he was a sole practitioner. He confirmed that he was first instructed in respect of the Property in April of 2018 when he was asked to consider a renovation schedule prepared by ASCO Design & Construction, prepared it seems for Mr Gatto in March 2018, although he thought it had been commissioned by BE. Asked about the specification he thought it reflected the scope of the works, but it could be improved. He said that he in fact started afresh and produced two specifications in November of 2018, one for the exterior including structural repairs to the internal staircase and the second for refurbishment of the communal hall and staircase. He confirmed that his specification had been completed towards the end November 2018 and he was awaiting the engineer's input before finally submitting. He did not think that he sent the specification to the Respondent before having sent it out to tender on 31st December 2018. His view was that he would ordinarily have sent the specification to Mr Dixon, but he could not find a record of having done so. Asked about when he last inspected the Property, he thought it was towards the end of last year before the latest set of tenders came in. In his view the specification that he had prepared represented all work required to be done to the Property now and going forward for some time. Asked whether he was familiar with any of the contractors, he said he was aware of Just Does It as they had done some items of work through SMR. He confirmed that the revised tender report dated March 2020 was the one that was to be proceeded with.

88. That concluded the evidence for the Respondent and we then had closing submissions from Counsel. Both have produced written submissions.

89. In Mr Warwick's closing notes, he indicated that any breach did not have to be material. Nor was the timing in respect of the works to be undertaken as set out in the section 22 notice critical. He confirmed that the question we had to consider was whether it was just and convenient to appoint Mrs Mooney. He drew to our attention and reminded us that the existing manager SMR had not undertaken the section 20 process correctly, failed to understand the purpose of the reserve fund and not complied with the terms of the lease in seeking the consent of Mrs Scott. In addition, there had been three sets of service charge accounts produced for 2019 which was confusing. Further, Mr Dixon gave wrong information and then appeared to blame Mrs Scott for making unjustified allegations. It was further said that he had dealt differently from

Mrs Scott to the other lessees and that after some three months without ever having met Mrs Scott decided to sever communication with her. It was suggested that Mr Dixon's attitude was very different from that of Miss O'Meara who sent an apology. There were a number of other criticisms made, particularly of Mr Dixon who Mr Warwick thought was partisan and antagonistic to Mrs Scott. His view was that if the Tribunal did not step in the future for the building and Mrs Scott's dealings with SMR seemed somewhat bleak.

90. In respect of the Respondent's position, it was said that the Company had unreasonably delayed in carrying out the works. Burlingtons had organised specifications and tenders and the work could have begun in 2017 but was not because of unreasonable caps upon expenditure being imposed by the Respondent's directors. He reviewed the estimates of work which appeared to indicate that over the three-year period as little as £10,000 may have been saved by each lessee although possibly less because there would have been funds in the reserve account. He reminded us that Child & Child had acted for the Respondents, had worked with Mrs Mooney and appeared to be minded to recommend her, but that did not happen, although in cross-examination Mr Gatto agreed it might be sensible to appoint Mrs Mooney.

91. Mr Warwick then went on address the recovery of legal costs and in particular the impact of the cases to which we have referred to previously. In respect of section 20C he set out the position in respect of both applications which we noted.

92. Adding some bones to his chronology he asked us to accept that there could be nothing wrong in Mrs Scott seeking legal advice and drew our attention as he had done to the shortcomings of SMR. He asked why Miss O'Meara who was Mr Dixon's senior and had been involved for some time had not been called. He was very critical of Mr Dixon's evidence and asked why no witness statement had been given to explain the service charge documents. It was, he said, not a complicated building; it is three flats and conventional construction. The criticisms made of Mrs Scott about legal fees were wrongful and unfair. Mr Dixon made unsupported allegations and that it was outrageous for him to cut communications with Mrs Scott. He submitted that Mrs Scott had correctly operated the legal process and her motive was to get the building refurbished. There were no winners and losers he said. There is a problem which needs to be resolved. Farrer & Co had held out olive branches to try and arrange for matters to be resolved but that had not happened. He submitted that we should appoint Mrs Mooney.

93. On the question of legal fees, the small invoice of just of £2,000 was a modest amount and there was no need to consider quantum but whether or not the costs could be paid from the service charge funds. In so far as the authorities are concerned, the wording in the Sella case was identical to the Applicant's lease and that Geyfords, the Upper Tribunal case referred to above, still meant that Sella was good law. We were to construe the lease at the date that it was granted, and the authority put forward by Mr Ranson of the Jam Factory was not of assistance in this regard. Mr Warwick briefly mentioned the estoppel

point but not application was made to amend the statement of case to include estoppel by convention and it was in his submission too late for us to do so.

94. Mr Ranson for the Respondent wanted us to ensure that we understood what the case was really about. It was he said a dispute between Mrs Scott and her fellow directors. It was his submission that Mrs Scott had taken the dispute between directors about who should be the managing agent and obstructing the Respondent and its managing agents created a situation in which she was able to start these proceedings.

95. Under the heading Why is there a dispute? his response was that there was precious little between the parties. Everybody wanted the work to be done, the specification had been agreed between two well qualified surveyors acting for the individuals and the Respondent and that since March of this year there had been a tender report which all parties seemed to find acceptable. His submission was that the answer for the dispute was about control of the Respondent and the building. He submitted that there had been initially concerns about unanimity but that did not seem to be pursued. Instead from May of 2019 the focus appeared to be about the state and condition of the building. He asked why Mrs Scott had not been able to explain why enfranchisement was impossible and why right to manage was not possible. He then, however, answered his own question by saying that in both cases they would only be possible if two out of the three tenants acted together. His submission was that the whole reason for Mrs Scott's application to the Tribunal is that she realised she could not control the Respondent and was not willing to work with her co-directors.

96. In respect of the appointment of manager application, he confirmed that the Respondent has never denied that there have been breaches of the lease or the RICS code. It cannot deny that the building needs work. The question really was whether it was just and convenient to make the order. He did however say that section 22 notice should not be overlooked and that in that notice no mention was made of the reserve fund or service charge accounts. Instead, he said the reserve fund issue only arose in respect of the June 2020 application by Mrs Scott under section 27A of the 1985 Act. Initially there had been a number of items in dispute but these were limited to the cost issue.

97. We noted all that he said in his written submission under the heading Relevant Evidence. In respect of whether it was just to make the order he felt that this would be in effect reward to Mrs Scott for the delay and difficulty she had caused to give her, by the back door, a level of control over the management of the building not anticipated by the lease she signed nor the articles of association of the Respondent. But also, he said, it would be wrong denying Mr Gatto and Miss Bakshi, or at least her family company, control, which they paid for when carrying out the collective enfranchisement in 2015. To make an order would give to a party who have behaved badly and taken away from two who behaved well, something that should occur. As to the convenience, it was said that such lack of inconvenience was revealed during Mrs Mooney's cross-examination. He stated it was only under cross-examination that she countenanced the idea of working with the agreed specification notwithstanding her witness statement had been made at the time the initial specification had been prepared. He felt

it could not be convenient given the circumstances of the case to make an order which would in effect duplicate time and effort. He summed up his views on the management application by saying that it was actively inconvenient to make an order, that an act of injustice to reward Mrs Scott for her conduct and an act of injustice to take away rights bargained and paid for by Mr Gatto and Miss Bakshi's family.

98. In respect of the service charge application, he submitted that the initially sum of £2,235 was worth just £700 or so for each party and should not consume a disproportionate amount of Tribunal's time. The Respondent's case is that neither Mr Gatto nor Miss Bakshi or her company had anything to do with the advice and that the evidence appeared to point towards Mrs Scott. Her name appears alongside the invoice in the spread sheet provided by BE and it is the Respondent's case that either Mrs Scott requested the advice or authorised the taking of same.

99. In respect of the Child & Child legal fees, we were referred to clause 5.4.8 of the lease which says under the heading Other Professionals etc *"to employ all such surveyors, builders, architects, engineers, tradesmen, accountants or other professional persons as may be necessary or desirable for the proper maintenance, safety and administration of the building*." He referred us to the case of Conway v Jam Factory Freehold, Geyfords v O'Sullivan and Sella House v Mears. He drew the distinctions between these cases and in respect of Geyfords it concerned legal costs incurred by the landlord pursuing his claim for unpaid service charges. We noted all that was said in this regard and the extracts taken from the various cases. It is said that although the wording in Sella House is identical to that in lease but the facts of the case were different.

100. He submitted that the facts of this case were startlingly similar to the facts of Conway and again recited extracts from that judgment.

101. He reminded us that this is not a landlord on the offensive and suing the tenants as was the case in Geyford and Sella House. It is not mixed-use building where the landlord gets any benefit from the tenants and there was no need for Mrs Scott's lease to expressly refer to solicitors or Counsel in order for their costs to be recovered. He contrasted the impacts of the words 'management' and 'administration' and was of the view that management and administration in a building such as this are entirely interchangeable.

102. His closing submission went on to raise the estoppel by convention point in respect of the invoice of £2,235 and as he indicated, Mrs Scott had incurred or authorised this and on taking over the management of the building SMR were entitled to proceed on the basis that legal fees were recoverable, this having happened previously.

103. He then made submissions in connection with the section 20C application and submitted that Mrs Scott had behaved in a way which was both oppressive to the Respondent and by any measure unreasonable listing those various allegations. In the circumstances, therefore, he submitted it would not be just or equitable to give the relief sought in section 20C. At the conclusion of his submissions he also made certain comments relating to the terms of the order

if we were minded to grant the Applicant's request for an appointment of a manager and we noted all that he said. These related to changes to paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 suggesting that a two-year period would be adequate and that may be it could be a period shorter than that, namely when the works were completed. We have borne his comments in mind.

104. Mr Warwick made a brief response to Mr Ranson's submissions as he had not had the opportunity of seeing them in advance. He went through Mr Ranson's written submissions responding as he felt necessary and Mr Ranson made a brief response to those points raised.

FINDINGS

105. It is a sadness that this case has come before the Tribunal. We saw three leaseholders who impressed us with their honesty and their desire to undertaken works to the Property to deal with the external and internal degeneration that has occurred over the years. It is difficult to understand why it has taken from 2014 to 2020 to reach a point where a tender document appears to be acceptable to both sides and is the basis upon which this matter can move forward.

106. We have heard from Mrs Scott, Mr Gatto and Miss Bakshi. There is no doubt that there is conflict between Mrs Scott and her fellow leaseholders. We find that Mrs Scott had enjoyed some control in connection with the Property for a period of time. We are not convinced that this was a deliberate act on her part, but she was certainly the party who was charged with dealing with Burlington Estates particularly as Miss Bakshi and her family were not in the Property for some considerable time while the refurbishment works were being undertaken. We know much has been made of Mrs Scott's renewal of BE's contract. However, that did not really seem to cause, certainly Mr Gatto, any concerns at the time.

107. The Company provision provides that the unanimous vote is not necessary but rather a majority. This is always going to be a potential difficult position where there are three people who cannot reach agreement. We accept that certainly Mr Gatto had some concerns as to the sums involved in connection with the refurbishment of the Property, but his basis upon which he challenged them, namely that he had spoken to people who had had work done and had spoken to a contractor at a Property next door, did not seem to us to give justification for him, followed by Miss Bakshi, putting a limit of £35,000 on all costs. We know at the hearing he made some departure from this by suggesting that materials might be dealt with differently and that those could be ordered more cheaply from suppliers. The understanding we have is that Mr Gatto thought that by giving BE this limit they could somehow negotiate with those contractors who had put forward tenders and achieve a substantial reduction on the costings. That seems to be something of a flight of fancy as there is no evidence that that was the case. Indeed, one only has to look at the tenders that have subsequently been obtained to see that there is not a great deal of difference between the highest and lowest costs. What does seem to be the case is that there may be some £40,000 difference and it is of great disappointment

to us that the parties to this litigation have probably spent at least that if not more in legal fees.

108. We are very grateful to Mr Warwick and Mr Ranson for the hard work they have done during the course of these proceedings and their written skeleton arguments and closing submissions which have been of great assistance to us. Insofar as the appointment of manager is concerned it has been helpful to limit the dispute to the 'just and convenient' provisions of the 1987 Act. As was put to us, we are a problem solving jurisdiction. The problem in this case is that we have three leaseholders in a block of three flats all with no shortage of financial backing who cannot seem to be able to reach an agreement on something that they are in fact all three agreed about, namely that this Property needs work doing to it.

109. In ordinary circumstances you would have hoped that three clearly intelligent people could have resolved the matter maybe by seeking the appointment of a managing agent who was acceptable to all three. Mrs Mooney was put forward on that basis and seemed to meet with the approval of Child & Child, but for reasons that are not wholly clear, that did not proceed.

110. We are concerned about SMR remaining as managing agents, largely as a result of Mr Dixon's evidence and the shortcomings in connection with the issue of the section 20 notices, the accounting provisions and the lease terms. Mr Dixon appears to have taken a dislike to Mrs Scott without ever having made the effort of meeting with her on a face to face basis to discuss the issues. It may not have resolved the problems but if he could have shown that such an attempt had been made and had been rebuffed by Mrs Scott, then that might have given us some assistance in the route that we would need to follow.

111. Mrs Scott's insistence on using Farrer & Co is perhaps unfortunate and expensive for her, but one cannot be too critical of her. Farrer & Co have written lengthy letters, which in the main seem to raise issues that required answers. The request for data information seems to us to be a heavy-handed way of dealing with matters and certainly the length of letters does not facilitate a prompt response. However, there is no doubt that in the Farrer & Co letters were olive branches which were not taken up by the parties when they could and perhaps should have been. An example of this is found at their letter of 7th April 2017 when under the heading Resolution they put forward the option of agreeing a suitable independent consultant to consider the lease, the scope of works and the proposals made by Ridge. This was rejected by Jaswal Johnston LLP in response of 20th April 2017. The final paragraph of that letter says the proposals for resolution seem to be misconceived. Instead, it refers to the dissatisfaction with the services provided by Burlingtons in the course of their appointment and the contractors they engaged to carry out the works for that management company.

112. There are a substantial number of documents in this case. Heading towards 2,000 pages or more, taking into account the skeleton arguments and submissions made. It is impossible for us to consider each and every document and each and every twist and turn that there may have been in connection with

the correspondence that passed between Farrer & Co on behalf of Mrs Scott and the four solicitors instructed on behalf of the Respondent.

113. We have made our assessment of the decision in this case based on those papers that were drawn to our attention, the submissions and skeleton arguments and of course the evidence given to us by those witnesses who we saw and heard from. As we have indicated above, we consider that each witness was being honest and portraying the case as they saw it. Much criticism was made of Mr Dixon by Mr Warwick and we were concerned that his attitude towards Mrs Scott so soon after he had been appointed to manage the Property was disappointing. However, it would be unfair to lay the blame of the impasse at his door alone.

114. We do think that the imposition of what was, we find, an unrealistic budget figure by Mr Gatto supported by Miss Bakshi was also a cause of the dispute between the parties. Mrs Scott's use of Farrer & Co as an 'attack dog' in connection with various matters did not assist but as we have indicated above, they did extend olive branches to try and see if the matter could be resolved. Indeed, the one we have referred to whilst being rebutted by Jaswal Johnston was to an extent the route that was suggested by Ronald Fletcher-Baker when they indicated there would be the intention of appointing a fresh surveyor to consider matters.

115. It seems to us that both sides have become entrenched in their respective positions. SMR are taking the side of the Respondent, and thus Mr Gatto and Miss Bakshi, in connection with the management of the Company. We do think there is an element of truth in Mr Ranson's suggestion that Mrs Scott has found the loss of influence frustrating and has contributed to the reasons why this application has come before us.

116. We are, however, as was put to us, a problem-solving jurisdiction. It seems to us the only way to enable these works to be undertaken without further delay and at a reasonable price with a competent contractor, is to appoint Mrs Mooney to manage the Property for a period of two years from 1st February 2021. We had initially hoped that we could start the appointment from an earlier date but with Christmas intervening and to give time for the parties to deal with the hand over we consider that this start date is appropriate.

117. We provided in the order that she should use Just Does It and also engage Mr Ashton and utilise his specification so that there is no unnecessary duplication of work. The specification appears to be acceptable to both sides and Just Does It appear to have met the due diligence enquiries that have been made. Our intention is that under the guidance of Mrs Mooney, these works can be undertaken to a satisfactory level at a satisfactory price. At the end of that period the management order can come to an end. Whether the parties decide to continue with the involvement of Mrs Mooney is a question for them. It does seem to us that with only three flats to deal with and presumably a fairly limited service charge requirement in respect thereof, that this is a case where it might be possible if there was good will on both sides for the management to be dealt with by the three leaseholders. Whether that is possible or cloud cuckoo land on our part we cannot say.

118. We have no doubt, however, that because of the somewhat entrenched attitudes on both sides the way of resolving this is to appoint Mrs Mooney and to get her to deal with these refurbishment works as quickly as possible and at as reasonable a price as possible so that the parties can hopefully move on and enjoy living in what is by common agreement a very pleasant part of the capital city.

119. We draw to the parties attention the terms of the Order annexed to this decision. It requires all concerned to assist Mrs Mooney. The existing agents SMR are expected to help with the hand over of all documents and accounts, with the monies therein. The parties are required to make initial contributions to set up a fund for Mrs Mooney to start work as soon as the Order takes effect and to use the period between the date of this decision and the commencement of the Order to have all in place so that the hand over is smooth and there is no reason for Mrs Mooney not to start works on the refurbishment as soon as possible.

120. We turn now to the section 27A issues and costs. There are it seems to us two issues. The first is whether or not the sum of £2,235 paid during the management period by BE were service charge costs which could be recoverable from the lessees. The sum involved is not great. There is a dispute as to whether or not Mrs Scott caused these costs to be incurred. Certainly, both Mr Gatto and Miss Bakshi deny that they had any involvement, and we accept that that is more than likely the case. Would Burlingtons have authorised the employment of solicitors without reference to the lessee? It seems to us doubtful. However, the only indication that this may have been incurred at the behest of Mrs Scott is to be found in the print off showing expenses for the period 2014 through to 2017 being Burlingtons management period. The invoice from Emms Gilmore Liberson is shown as a tenant recharge with the name Mrs Scott recorded. The invoice from Emms Gilmore Liberson dated 10th January 2017 is headed final bill and is legal costs in connection with advising on the titles to the three flats, the responsibility to contribute to service charge and reserve funds taking into account lease extensions and extensions to one of the flats. We agree with Mr Ranson that it is hardly likely that certainly Miss Bakshi would have wanted to have incurred legal costs in respect of this matter. This sum of £2,235 appears to have been settled from the service charge account without demur. We find it surprising therefore that Mrs Scott should seek to challenge this in her application made on 16th June 2020. Indeed, that application for a determination under section 27A referred to a number of issues for the years 2017 to 2020. Insofar as this item of cost is concerned, we are of the view and find that this was a matter which had been undertaken probably at the behest of Mrs Scott and it seems to us it ill behoves her now to seek to challenge this expense. The cost is allowed in these circumstances as a service charge. However, this is a one off and we must consider, therefore, the position in respect of the future costs that may be incurred on behalf of the various solicitors instructed to act on behalf of the Respondent since proceedings were commenced to appoint a manager. We also consider that the provisions of section 27A(4)(a) would apply and that this expense is only challenged as the subsequent challenge to costs would sit uneasily if this expense was not disputed.

121. We have noted Mr Ranson's argument that there may be some form of estoppel by convention, but it seems to us that it is not appropriate for him to include this in his skeleton argument. It was not raised in any of the "pleadings" or in witness statements and in those circumstances, this is not a matter that we are prepared to allow him to introduce this late in the day.

122. In determining whether or not legal costs would be recoverable under the terms of the lease, which would include not only these proceedings but future proceedings we have borne in mind the three authorities that Counsel has referred us to. They are the Sella House case, Geyford and the Jam Factory.

123. It appears to be common ground that the clause of the lease that we need to consider is 5.4.8 under the heading Landlord's Obligations. The landlord's obligations include quite enjoyment, to observe the obligations of the lease in respect of unlet parts of the buildings and at 5.3, at the request of the tenant and subject to payment on a full indemnity basis, to enforce covenants entered into with the landlord by the tenant of any other flat in the building in connection with any breaches there may be.

124. 5.4 sets out service charge obligations including maintenance and repair, external decorations, insurance, upkeep of internal common parts, payment of water rates and the employment of staff.

125. At 5.4.7 of the lease there is the entitlement to employ managing agents and at 5.4.8 of the lease the following clause is found headed 'Other Professionals etc' *"to employ all such surveyors builders architects engineers tradesmen accountants or other professional persons as may be necessary or desirable for the proper maintenance, safety and administration of the building."* This wording is exactly the same as that found in the lease considered by the Court of Appeal in Sella House Ltd v Mears.

126. In respect of the Jam Factory case, the clause in that case was 14 in the lease headed General Agreements and Declarations which said as follows "*For the avoidance of doubt the parties acknowledge and declare that notwithstanding anything herein contained or implied: - 14.1 in the management of building and the performance of the obligations of the landlord hereinafter set out the landlord shall be entitled to employ or retain the services of any appropriately qualified or experienced employee, agent, consultant, service company, contractor, engineer or other advisers of whatever nature as the landlord may reasonably require in the interest of good estate management and the proper expenses incurred by the landlord in connection therewith shall deem to be an expense incurred by the landlord in respect of which the tenant shall be liable to make a contribution in accordance with the service charge percentage under the provisions set out in the ninth schedule hereto."*

127. In the Geyford case it appears that paragraph 6 of the lease was critical to the appeal which says as follows *"All other expenses (if any) incurred by the Lessors or their managing agents in and about the maintenance and proper and convenient management and running of the Development."*

128. Our construction of paragraph 5.4.8 leads us to the view that the wording contained therein is aimed the maintenance, safety and administration of the building. The ability to employ surveyors, builders, architects, engineers, tradesmen, accountants or other professional persons is not in the clause before us dealing with the management. Although Mr Ranson says that administration and management are interchangeable, we are not convinced that is the case. This clause is on all fours with that which was found in the Sella House case. There is no indication in the Sella House case that the Court would have taken a different view if the landlord were being pursued by tenants and were seeking to recover the costs of those proceedings.

129. We remind ourselves that these are 999 year leases entered into between three lessees each of whom owns a flat at the Property. They could have included any clause they could agree upon, such as the recovery of costs, in clear and unambiguous terms. These are not large commercial development as in the Jam Factory nor a mixed use of residential and commercial as in Geyford. They are three flats owned by the individual flat owners with a company incorporated by the owners of the flats at the time of the inception and which now allows directors to be owners of those flats if they were not the original parties to the lease. We remind ourselves also that the company provisions provide for majority decisions.

130. We square those findings with our decision in respect of the smaller sum of costs on the basis that we find on the balance of probabilities that Mrs Scott was seized of knowledge that those costs had been incurred and we suspect at her bidding. Those costs were paid out of the service charges and given that she did not issue the application to challenge for those costs until 2020 it seems to us, as we have said above, that the provisions of section 27A(4)(a) have been met.

131. Whilst we are considering the payment of service charges we can deal quite quickly with the payment of the fees to Mr Ashton. We accept that the consent of Mrs Scott should have been sought, but it should not be unreasonably withheld. To avoid unnecessary further issues we consider that this expense should be allowed as it would in our finding be unreasonable for Mrs Scott to have objected given the sum involved, the fee being settled and the acceptance of the work of Mr Ashton.

132. Finding that the legal costs are not recoverable does not therefore in all probability require us to make a finding under section 20C.

133. However, we think it might be appropriate if we were to state our views on this. We consider that both sides have embarked upon litigation which could and should have been avoided. We believe that this is a case of six of one and half a dozen of the other. The only reason we are willing to appoint Mrs Mooney as the Tribunal manager is there seems no other way of avoiding the apparent impasse that has now arisen. Furthermore, as we have said previously, we would be concerned that the continued involvement of SMR who have had their failings and in particular the involvement of Mr Dixon who appears to have taken a fairly immediate dislike to Mrs Scott, would cause the future management of the building to be difficult. In those circumstances we think an order under section 20C in favour of Mrs Scott would be just and equitable and

we make such an order. It means that Mrs Scott will have to bear her own costs, which are likely to be substantial given the involvement of Farrer & Co and that Mr Gatto and Miss Bakshi will have to resolve the question of costs on behalf of the Respondent in relation to their legal charges.

134. As a shot across the bows to the parties, if anybody is considering making an application under section 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 we would dissuade them from doing so. We cannot see that the conduct of either side, during the course of the proccedings, is such that a cost order should be visited upon them.

Andrew Dutton

Judge: _____
A A Dutton

Date: 14th December 2020

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

CASE REFERENCE: LON/00BK/LAM/2019/0026

IN THE MATTER OF SECTION 24 (1) OF THE LANDLORD AND TENANT ACT 1987

AND IN THE MATTER OF

10 Eaton Place, London SW1X 8AD

B E T W E E N:

Mrs Shirley Elizabeth Scott **Applicant**

AND

Ten Eaton Place (Freehold) Limited

Respondent

MANAGEMENT ORDER

Interpretation:

In this Order:

(a) "Common Parts" means, as defined in the Leases, the areas and amenities at 10 Eaton Place, London SW1X 8AD available for use in common by the lessees and occupiers of the Building and all persons expressly or by implication authorised by them, including the pedestrian ways, forecourts, entrance halls, landings, staircases, passages, basement yard, communal boiler room and areas designated for the keeping and collecting of refuse but not limited to them.

(b) "Leases" means the long leases vested in the Lessees of the apartments.

(c) "Lessee" means a tenant of a dwelling holding under a long lease as defined by Section 59(3) of the Landlord and Tenant Act 1987 ("the Act").

(d) "the Manager" means Ms Alison Mooney of Westbury Residential Limited of Suite 2, De Walden Court, New Cavendish Street, London W1W 6DX.

(e) "Premises" means the property 10 Eaton Place, London SW1X 8AD and the three residential apartments therein together with the common parts

Preamble

UPON the Applicant having applied for the appointment of a Manager under Part II, Landlord and Tenant Act 1987

AND UPON the First-Tier Tribunal being satisfied that the Applicant is entitled to so apply for an Order and that the jurisdiction to appoint a Manager is exercisable in the present case

AND UPON the First-Tier Tribunal being satisfied that the conditions specified in S.24 Landlord and Tenant Act 1987 are met, such that it is just and convenient to appoint a Manager

IT IS ORDERED THAT

The Manager

1. The appointment of Mrs Mooney as Manager of the Premises pursuant to S.24 of the Act for a period commencing 1st February 2021 shall continue for a period of two years (2) to expire on 31st January 2023 and is given for the duration of her appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of the Respondent and in particular:

   (a) To receive all future service charges, interest and any other monies payable under the Leases and any arrears due. For the period prior to 1st February 2021 such arrears found to be due and owing shall, unless recovered by the Respondent, be recoverable by the manager who shall be responsible for the recovery of service charges payments during the currency of this Order and any extension hereto, the recovery of which shall be at the discretion of the Manager.

   (b) For the avoidance of doubt, the current service charge financial year shall run in the first year of this Order from 1st February 2021 and thereafter from 1st February to 31st January in each year this Order is in place.

   (c) The power and duty to carry out the obligations of the Respondent contained in the Leases and in particular and without prejudice to the foregoing:

      (i) The Respondent's obligations to provide services including insuring the Premises;

      (ii) The Respondent's repair and maintenance obligations; and

      (iii) The Respondent's power to grant consent.

      (iv) The obligation to provide notices under the Leases shall be met if such Notices are sent to the Manager and not to the Respondent

(d) The power to delegate to other employees of Westbury Residential Limited, appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as she may reasonably require, to assist her in the performance of her functions, and pay the reasonable fees of those appointed.

(e) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform herself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.

(f) The power in her own name or on behalf of the Respondent to bring any legal action or other legal proceedings in connection with the Leases of the Premises including but not limited to proceedings against any Lessee in respect of arrears of service charges and to make any arrangement or compromise on behalf of the Respondent. The Manager shall be entitled to an indemnity for both her own costs reasonably incurred and for any adverse costs order out of the service charge account.

(g) The power to commence proceedings or such other enforcement action as is necessary to recover sums due from the Respondent pursuant to Paragraph 1 (f) of this Order.

(h) The power to enter into or terminate any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of her functions.

(i) The power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to her appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 or any replacement and to hold those funds pursuant to S.42 of the Landlord and Tenant Act 1987. The Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the lease (if any) or to power given to her by this Order) and all other monies received pursuant to her appointment and shall

keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund.

(j) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the Respondent or any Lessee owing sums of money under his/her Lease.

(k) The power to borrow all sums reasonably required by the Manager for the performance of her functions and duties, and the exercise of her powers under this Order in the event of there being any arrears, or other shortfalls, of service charge contributions due from the Lessees or any sums due from the Respondent, such borrowing to be secured (if necessary) on the interests of the defaulting party (i.e., on the leasehold interest of any Lessee, and the freehold of the Premises in respect of the Respondent).

(l) The power to insure the whole Premises as a cost to the service charge account.

(m) The power to raise a reserve fund.

(n) To forthwith, that is to say from the date of this Order, demand from each lessee the sum of £5,000 on account of service charges for the year commencing February 2021 and to make further demands of such amount as the Manager shall reasonably determine on account of ongoing service charge contributions and contributions to the reserve fund from each lessee on the usual quarter days in each year of the appointment. Such payments to be in addition to any demands made in respect of qualifying works or long term agreements as provided for under the provisions of s20 of the Landlord and Tenant Act 1985.

2. The Manager shall manage the Premises in accordance with:

(a) the Directions of the Tribunal and the Schedule of Functions and Services attached to this Order;

(b) the respective obligations of all parties – landlord and tenant – under the Leases and Transfers and in particular with regard to repair, decoration, provision of services and insurance of the Premises; and

(c) the duties of managers 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 S.87 of the Leasehold Reform, Housing and Urban Development Act 1993.

3. From the date of this Order, no other party shall be entitled to exercise a management function in respect of the Premises where the same is a responsibility of the Manager under this Order.

4. From the date of this Order, the Respondent shall not, whether by any agent, servant or employee, demand any further payments of future services charges, administration charges or any other monies from the Lessees at the Premises, such functions having been transferred to the Manager from 1st February 2021. For the avoidance of doubt the Respondent may seek to recover service charge arrears up to the date of the appointment provided any monies so recovered are deposited with the Manager.

5. The Respondent and the Lessees and any agents or servants thereof shall immediately give all reasonable assistance and cooperation to the Manager in pursuance of her duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of her said duties and powers.

6. Without prejudice to the generality of the foregoing hereof:

(a) The Respondent shall permit the Manager and assist her as she shall reasonably require to serve upon Lessees any Notices under S.146 of the Law of Property Act 1925 or exercise any right of forfeiture or re-entry or anything incidental or in contemplation of the same.

(b) It is the obligation of the Respondent to provide the Manager with all information necessary to deal with the management of the Premises. This shall include, but it not limited to, up to date details of each

leaseholder, full details of any employment contracts, full details of any ongoing contracts relating to the Premises, full details of all funds held by the Respondent with copies of all bank accounts relating thereto, the transfer of such funds to the Manager shall be undertaken by the Respondent without delay and without set off, together with the depositing of any monies recovered from lessees in respect of service charges accruing prior to 31st January 2021.

(c) The Respondent shall deliver to the Manager all keys, fobs and other access/entry cards to the Premises, including keys to services and the meter cupboards and safety equipment. If the Respondent fails to deliver such keys etc, the Manager shall be entitled to remove the existing locks and other security systems currently installed at the Premises and install such locks and other security as, in her absolute direction, she thinks fit.

(d) The rights and liabilities of the Respondent arising under any contracts of insurance to the Premises shall continue as rights and liabilities of the Manager.

(e) The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges) in accordance with the Schedule of Functions and Services attached.

7. The Manager shall in the performance of her functions under this Order exercise the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and shall ensure they have appropriate professional indemnity cover in the sum of at least £4,000,000 providing copies of the current cover note upon request by any Lessee, the Respondent or the Tribunal.

8. The Manager shall act fairly and impartially in her dealings in respect of the Premises.

9. The Manager's appointment shall continue from the date of this Order and the duration of her appointment shall be until 31st January 2023.

10. The obligations contained in this Order shall bind any successor in title and the existence and terms of this Order must be disclosed to any person seeking to acquire either a leaseholder interest (whether by assignment or fresh grant) or freehold.

11. Within 28 days of the conclusion of the management order, the Manager shall prepare and submit a brief written report for the Tribunal, on the progress and outcome of the management of the property up to that date, to include final closing accounts. The Manager shall also serve copies of the report and accounts on the lessor and lessees, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new tribunal-appointed manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.

Liberty to apply

11. The Manager may apply to the First-Tier Tribunal (Property Chamber) for further directions in accordance with S.24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:

    a. Any failure by any party to comply with an obligation imposed by this Order;

    b. For directions generally;

    c. Directions in the event that there are insufficient sums held by them to discharge their obligations under this Order and/or to pay their remuneration.

Andrew Dutton

Signed Tribunal Judge Dutton

Dated 14th December 2020

SCHEDULE

FUNCTIONS AND SERVICES

Financial Management:

1. Administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees as per the proportions under the terms of the Leases at year end.

2. Demand and collect service charges, insurance premiums and any other payments due from the Lessees in the proportions set out in paragraph 1 above and in accordance with the provisions of 1(n) above. Instruct solicitors to recover any unpaid service charges and any other monies due to the Respondent.

3. Create a form of reserve fund and as soon as is practicable demand from the lessees sufficient funds to enable the implementation of the Major Works as referred to in the Tender prepared by Michael Aston in March 2020 (the Tender).

4. Produce for inspection (but not more than once in each year) within a reasonable time following a written demand by the Lessees or the Respondent, relevant receipts or other evidence of expenditure, and provide VAT invoices (if any).

5. Manage all outgoings from the funds received in accordance with this Order in respect of day to day maintenance and pay bills and in particular in respect of the following matters, the priority of which shall be at the Manager's discretion (save for the implementation of the Tender for internal and external works (see below)), which are to be undertaken as soon as funds allow and to implement recommendations, if any, arising from:

    - any Health and Safety, Fire prevention and asbestos report (if not already in place and in sufficient detail to the reasonable satisfaction of the Manager at her absolute discretion)

- any electrical survey to be conducted by a suitably qualified electrical contractor (if not already in place and in sufficient detail to the reasonable satisfaction of the Manager at her absolute discretion)

- Undertake such works as are advised as being of an emergency nature, if any, arising from the above reports or surveys

- As soon as the lessees have provided funds for the Major Works to implement the terms of the Tender and to instruct Just Does Limited to undertake the works, both internal and external, at the price they have tendered, namely £172,273 excluding VAT.

- Provide a written report to the Tribunal at the end of each financial year, the first being at the end of the period 31st January 2022 to confirm what progress has been made, including an update on the financial status of the Respondent any further powers that the Manager may require.

6. Deal with all enquiries, reports, complaints and other correspondence with Lessees, solicitors, accountants and other professional persons in connection with matters arising from the day to day financial management of the Premises and to call annual meetings of the leaseholders and to take minutes of such meetings and include those with the annual report to the tribunal.

Insurance:

7. To insure the Premises in accordance with the terms of this Order and the leases in an insurance policy in the Manager's own name, with the lessees interests being noted (if possible), in relation to the Premises and the contents of the common parts of the Premises with a reputable insurer, and provide a copy of the cover note/schedule to all Lessees and the Respondent if requested and to display a copy of the insurance schedule on the notice board at the Premises.

8. Manage or provide for the management through a broker of any claims brought under the insurance policy taken out in respect of the Premises with the insurer.

Repairs and Maintenance

9. Deal with all reasonable enquiries raised by the Lessees in relation to repair and maintenance work, and instruct contractors to attend and rectify problems as necessary, subject to the priorities given at paragraph 5 above.

10. Administer contracts in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to contracts.

11. Manage the Common Parts and service areas of the Premises, including the arrangement and supervision of maintenance.

12. Carry out regular inspections (at the Manager's discretion but not less than monthly) without use of equipment, to such of the Common Parts of the Premises as can be inspected safely and without undue difficulty to ascertain for the purpose of day-to-day management only the general condition of those Common Parts.

Administration and Communication

13 Deal promptly with all reasonable enquiries raised by Lessees, including routine management enquires from the Lessees or their solicitors.

14. Provide the Lessees with telephone, fax, postal, emergency and email contact details and complaints procedure.

15. Keep records regarding details of Lessees, agreements entered into by the Manager in relation to the Premises and any changes in Lessees.

16. Attend an Annual meeting of the leaseholders and arrange for a meeting with the leaseholders within 30 days of the commencement of this Order.

Fees

16. Fees for the above-mentioned management services (with the exception of supervision of major works and the additional costs set out on the appendix) shall be a fixed management fee of £3,000 plus vat payable half yearly on 1st June and 1st December for the period of the appointment.

17. Additional charges are set out on the appendix.

Additional Costs as per paragraph 17 of the schedule to the Order

Additional services;

Any work outside the terms of the Order to include attendance at FTT or Court as required charged as follows:
Director at £250 per hour plus VAT
Team Leader at £200 per hour plus VAT
Senior Property/Accounts manager at £200 per hour
Property/Accounts manager at £150 per hour and
Administrator at £50 per hour plus VAT

Oversight of the s.20 process including serving of statutory notices, consultations, assistance with specification and the tendering process, collecting required sums and general contract administration including site meetings and inspections, as required. - 1% + VAT of the total costs of the Major Works if over £50,000 and for works under £50,000 2%.

There is no additional charge for attending the Annual Meeting nor the initial meeting with the lessees.

License for alteration - £150 to £750+VAT + Consultant Surveyors costs and legal depending on the nature of the alteration, charged by the profe3ssional concerned.

Solicitors pre-contract sale enquires or re-mortgage enquires on transfer of the individual units - £300+VAT with an additional charge of £175 + VAT is an expedited service is required

Notices of transfer or charge; consent to Sub-Let; deed of covenant on the transfer of the individual units - £90+VAT

Attendance at & preparation for court or FTT etc as required. Dependant on circumstances £85+VAT per hour + Costs/Disbursements