



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

**Case Reference** : **BIR/41UE/LVM/2020/0003**

**HMCTS Code** : **V:CVPREMOTE**

**Subject premises** : **Tower Court/Trinity Court/Windsor Court  
No 1 London Road  
Newcastle-under-Lyme  
ST5 1LT**

**Applicants** : **Various leaseholders of flats in the subject  
premises**

**Representative** : **Ms Miriam Seitler/Freeths LLP**

**Respondent** : **Ian Hollins**

**Representative** : **Mr Robert Bowker**

**Application** : **Application under section 24(9) of the  
Landlord and Tenant Act 1987 for the  
discharge/variation of an order appointing  
a manager of the subject premises**

**Tribunal members** : **Deputy Regional Judge Nigel Gravells  
Graham Freckelton FRICS**

**Date of hearing** : **29 January 2021**

**Date of decision** : **22 February 2021**

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**DECISION**

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## **Introduction**

- 1 On 11 February 2020 the Tribunal made an Order ('the 2020 Order') under section 24(1) of the Landlord and Tenant Act 1987 ('the 1987 Act'), appointing the Respondent, Mr Ian Hollins, as manager of the subject premises for three years from the date of the Order.
- 2 On 20 September 2020 the Tribunal received an application under section 24(9) of the 1987 Act seeking the discharge of the 2020 Order. The application was made in the name of Number One London Road Management Limited, the freeholder of the subject premises (and the manager of the subject premises prior to the appointment of Mr Hollins).
- 3 However, the Tribunal subsequently granted applications to make two amendments to that application. First, Number One London Road Management Limited was replaced as applicant by 78 named leaseholders of flats in the subject premises ('the Applicants'). Second, the application was amended to include, as an alternative to the discharge of the 2020 Order, the variation of the Order – specifically (i) the replacement of Mr Hollins with Mr Chris Hulme as manager of the subject premises and (ii) the deletion of paragraph 19 of the 2020 Order (which allows the manager to charge additional fees in respect of qualifying works and/or qualifying contracts).
- 4 The Tribunal issued Directions on 18 December 2020.
- 5 A remote hearing took place held on 29 January 2021. The following Applicants attended: Dr Xenofon Sgouros, Mr and Mrs Brian Harrison, Mr and Mrs Tom Nesbitt, Richard and Anna Hatley, David Griffiths, Mrs Ayub Khan, Kerry Machin and Sean Cassidy. Also in attendance were Mr Chris Hulme (the Applicants' proposed new manager) and Kirsty Thorley and Steve Gallet (both of Rory Mack Associates, the proposed managing agents). The Applicants were represented by Ms Miriam Seitler (of Counsel) and Alison Willis, Ravinder Bhomra and Maryam Satter (all of Freeths). The Respondent attended and was represented by Mr Robert Bowker (of Counsel).
- 6 Following the hearing, the parties were invited to submit further representations on the implications of a change of manager for the application made by Mr Hollins to the Building Safety Fund: see paragraphs 24ff below. As directed, the Applicants submitted their representations on 8 February 2021 and the Respondent submitted his representations on 12 February 2021.

## **Background**

- 7 The 2020 Order was made following an application under section 24 of the 1987 Act ('the 2019 application'). Somewhat unusually, that application was made by a single leaseholder (Ms Kate Williams). No other leaseholder joined in the application and only two other leaseholders indicated a willingness to support the application; on the other hand, apart from those leaseholders who were directors of No 1 London Road Management Limited, the leaseholder-owned management company and Respondent to the 2019 application, no other leaseholder opposed the application.
- 8 The background to the 2019 application and the reasons for the decision to appoint Mr Hollins as manager of the subject premises are set out in the Tribunal's decision dated 11 February 2020: see BIR/41UE/LAM/2019/0003.

- 9 In summary, the Tribunal was satisfied that a number of the Applicant's allegations of mismanagement were well-founded. In particular, the Tribunal found that fire safety issues affecting the subject premises had not been addressed with the urgency that they required.
- 10 The Tribunal further determined that it was just and convenient to appoint a manager because the Tribunal found on the evidence that the Respondent had had, and might continue to have, an adverse effect on the proper management of the subject premises.
- 11 On the other hand, the Tribunal indicated its unwillingness to appoint as manager the person initially proposed by the Applicant, namely Mr Chris Williams, the Applicant's father, who had conducted the application on behalf of his daughter. However, the Applicant indicated that she was prepared to propose the appointment of Mr Ian Hollins, of Clear Building Management Limited, which had been appointed as managing agent in March 2019. The Tribunal was satisfied that Mr Hollins had the required knowledge and experience generally to manage the subject premises and to address and resolve the specific issues currently affecting the subject premises. The Tribunal therefore ordered the appointment of Mr Ian Hollins as manager of the subject premises for a period of three years.
- 12 However, Mr Williams continued to 'monitor' Mr Hollins' management of the subject premises; and he continued to email the Tribunal with criticisms of Mr Hollins.
- 13 In due course the Tribunal received the present application.

## **Representations of the parties**

### Representations of the Applicants

- 14 On behalf of the Applicants, Ms Seitler submitted –
  - (i) that Mr Hollins had failed to manage the subject premises properly;
  - (ii) that, irrespective of any management failings, since a very substantial majority of the leaseholders no longer had confidence in Mr Hollins and wished to have the 2020 Order discharged or varied, it could no longer be just and convenient for the 2020 Order to continue in force;
  - (iii) that the grounds on which the 2020 Order was made no longer apply;
  - (iv) that the management failings of Mr Hollins and the leaseholders' wish to have the 2020 Order discharged or varied outweighed any risk to securing funding from the Building Safety Fund and the Waking Watch Relief Fund.
- 15 The Applicants therefore request that the 2020 Order be discharged. The consequence would be that No 1 London Road Management Limited would be 'reinstated' as manager, pursuant to the terms of the Applicants' leases; and that Mr Chris Hulme/Rory Mack Associates would be appointed as managing agents. Alternatively, the Applicants request that the 2020 Order be varied and that Mr Hollins be replaced by Mr Hulme as the Tribunal-appointed manager.
- 16 In the event that the Tribunal decides to vary the 2020 Order, the Applicants also seek the deletion of paragraph 19 of the Order (which allows the manager to charge additional fees in respect of qualifying works and/or qualifying contracts). That issue is considered separately: see paragraphs 63-70 below.

17 The Applicants' submissions are elaborated in the following paragraphs.

*Management failures*

- 18 Ms Seitler listed various alleged management failings on the part of Mr Hollins –
- (i) that Mr Hollins incurred unreasonable costs in carrying out various works at the subject premises (professional fees, Vemco fire safety report, fire alarm system, repairs to swimming pool and sauna);
  - (ii) that Mr Hollins failed to provide adequate information about the management of the subject premises in a timely manner (fire safety report, Building Safety Fund application, buildings insurance, July 2020 service charge demands, NHBC claim, professional fees);
  - (iii) that certain management decisions taken by Mr Hollins were open to question (Building Safety Fund, buildings insurance, repairs to swimming pool and sauna, July 2020 service charge demands, abandonment of NHBC claim, failure to commence statutory consultation in respect of the fire alarm upgrade);
  - (iv) that Mr Hollins had failed to carry out some management obligations contained in the leases (maintenance of gardens, replacement of car park shutters, general maintenance);
  - (v) that Mr Hollins has failed to communicate adequately with the leaseholders.

*Lack of confidence in Mr Hollins*

- 19 Ms Seitler referred to the emails from 78 leaseholders, confirming that they wished to join in the present application.
- 20 Ms Seitler also referred to the witness statements of seven leaseholders and emails from 12 leaseholders, which repeated some of the criticisms of Mr Hollins and expressed a lack of confidence in Mr Hollins.
- 21 Ms Seitler argued that, even if the Tribunal were to find that there have been no management failings on the part of Mr Hollins, the 2020 Order should be discharged (or varied) solely on the ground that the leaseholders no longer had trust and confidence in Mr Hollins and that their relationship was not working.

*Grounds for 2020 Order*

- 22 Ms Seitler argued that the principal reason for the 2020 Order was the concern in relation to the fire safety issues affecting the subject premises; and that those issues have been addressed and will continue to be pursued by the proposed new manager or managing agent.
- 23 Ms Seitler stated that the Applicants questioned the Tribunal's findings in its 2020 Decision that No 1 London Road Management Limited had frustrated the effective management of the subject premises and might continue to do so. The Applicants also stated that the dispute that prompted the 2019 application had since been resolved.

*Building Safety Fund/Waking Watch Relief Fund*

- 24 At the hearing on 29 January 2021 the Tribunal raised the question as to the implications of a change of management for the application that Mr Hollins had made to the Building Safety Fund and the anticipated application to the Waking Watch Relief Fund.
- 25 The Building Safety Fund was set up by the Government following the Grenfell Tower fire in 2017 to provide grants for the replacement of unsafe cladding on high-rise residential buildings, such as the subject premises. The Waking Watch Relief Fund was also set by the Government to provide contributions to the costs of operating waking watches pending the remedying of the cladding issue and/or the upgrading of fire alarm systems.
- 26 Mr Hollins has applied to the Building Safety Fund and the application is well advanced. The Tribunal was concerned that, if it discharged the 2020 Order, any new manager would be required to restart the application procedure and that that might prejudice the obtaining of funding for the subject premises. Since the Fund could contribute funding in excess of £6 million, which would otherwise probably have to be recovered from the leaseholders, the Tribunal was of the view that clarification of the position was essential. As noted above, the Tribunal therefore invited further representations from the parties.
- 27 The Tribunal had similar concerns about the Waking Watch Relief Fund, although the application process has only recently started and the sums involved are rather less.
- 28 The Applicants accept that, if there is a change of manager, the Building Safety Fund application will need to be re-submitted. However, they argue (i) that the re-submission process should take no more than six weeks; (ii) that funding is not allocated according to when the application is registered or submitted, but instead when the application reaches the stage that funding can be granted; (iii) that there is an expectation that the available funding will be increased. On that basis, the Applicants assert that the risk of prejudice caused by having to re-submit the Building Safety Fund application is 'limited'.
- 29 The Applicants' position is that any risk is outweighed by the original grounds for the discharge application.
- 30 In relation to the Waking Watch Relief Fund, the Applicants argue that, given the later start of the application process, the discharge or variation of the 2020 Order would not prejudice the progress or outcome of any application to the Fund.

#### Representations of the Respondent

- 31 On behalf of the Respondent, Mr Bowker chose not to address each and every allegation made by the Applicants. Rather he took the Tribunal through a detailed analysis of the documentation in the hearing bundles. He submitted that those documents established that Mr Hollins had acted properly and correctly in relation to five key decisions that were the subject of the Applicants' allegations of mismanagement: (i) the decision to instruct Vemco (rather than Firecomply) to produce a fire safety report and recommendations; (ii) the decision not to circulate the original version of the Vemco report and recommendations; (iii) the decision to issue the July 2020 service charge demands; (iv) the introduction of the waking watch; and (v) the deferment of statutory consultation.

- 32 Other issues not specifically addressed by Mr Bowker during the hearing are addressed in Mr Hollins' Statement of Case. His representations are referred to in the following discussion.

## **Discussion**

### Legal Framework

- 33 Section 24 of the Landlord and Tenant Act 1987 provides -
- (9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section ....
- (9A) The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied -
- (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
- (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.
- 34 Section 24(2ZA) provides (so far as material) –
- In this section 'relevant person' means a person –
- (a) on whom a notice has been served under section 22 ....
- 35 It is not disputed that, following the amendment to the application and the substitution of the leaseholders as Applicants (for No 1 London Road Management Limited), the Applicants are not 'relevant persons' for the purposes of section 24(9A), that subsection is not engaged in the present case and the two conditions set out in paragraphs (a) and (b) do not need to be satisfied. It follows that the 1987 Act provides no *express* test to be applied in determining whether the 2020 Order should be discharged or varied. On the other hand, it may be inferred from the totality of section 24 that the Tribunal should consider whether it would be just and convenient to discharge or vary the Order; and both the Applicants and the Respondent expressly adopt that test – the Applicants in paragraph 18 of their Statement of Case and the Respondent in paragraph 28 of his Statement of case. Moreover, the Tribunal agrees with the Respondent that the test of whether a particular outcome is just and convenient can only sensibly be applied against the background of (all) the circumstances of the case, which common sense suggests include the circumstances which led to the 2020 Order being made.
- 36 The Tribunal also notes certain judicial observations on the purpose of sections 21-24 of the 1987 Act.
- 37 In *Maunder Taylor v Blaquiere* [2002] EWCA Civ 1633, Aldous LJ observed (at paragraph [36]) -
- Section 21 is the first section of Part II [of the Landlord and Tenant Act 1987]. It was amended by the Housing Act 1996. As amended it enabled a tenant of a flat contained in premises to which Part II applies to apply to the Tribunal for an order under section 24 appointing 'a manager to act in relation to the premises'. It is worth noting that the manager is not said to act in carrying on the business of the landlord .... He is 'to act in relation to the premises'.

- 38 In *Kol v Bowring* [2015] UKUT 0530 (LC), HHJ Gerald observed (at paragraph [22]) –

The purpose of the power granted by section 24 of the 1987 Act to appoint managers or receivers in respect of residential property is to enable that property to be managed subject to the control of the tribunal in circumstances where the landlords' management or discharge of its obligations under the provisions of the lease have been found wanting. Looking at matters very broadly, the whole purpose of the jurisdiction is to enable the F-T to ensure that that what has hitherto been done inadequately and perhaps improperly is done adequately and properly.

- 39 Those observations suggest that the Tribunal should focus on ensuring that the physical premises continue to be properly managed.

### Conclusions on the Applicants' submissions

#### *Management failures*

- 40 The Tribunal is not persuaded that the Applicants have established significant management failures on the part of Mr Hollins. On the contrary, the Tribunal is of the view that Mr Hollins has managed the subject premises effectively and efficiently – and that he has done so in the challenging circumstances created by the physical condition of the subject premises and the response of some leaseholders to the management decisions required to address the issues affecting the subject premises.
- 41 The Tribunal also accepts (and the Applicants do not question) that Mr Hollins has complied fully with his duties under the Regulatory Reform (Fire Safety) Order 2005 and with the guidance set out in Approved Document B of the Building Regulations 2010.
- 42 In respect of the alleged management failings listed in paragraph 18 above –
- (i) Mr Hollins has provided a detailed explanation of costs incurred under the heads identified by the Applicants; and, in the view of the Tribunal, thus far the Applicants have not established that any costs were unreasonably incurred. If the Applicants wish to challenge as unreasonable costs incurred by Mr Hollins in carrying out various works on the subject premises and included in the certified service charge accounts for the relevant year(s), section 27A of the Landlord and Tenant Act 1985 provides the statutory mechanism for doing so.
  - (ii) The Tribunal is not persuaded that Mr Hollins has failed to provide adequate information about the management of the subject premises in a timely manner. Mr Hollins arranged two (necessarily remote) meetings for the leaseholders, with the relevant expert personnel; but very few leaseholders attended. He has continued to provide a number of lengthy updates to the leaseholders – by letter and email and on the portal. Where Mr Hollins delayed the sharing of information with the leaseholders, the Tribunal is satisfied that there were valid reasons for doing so. For example, the Tribunal accepts that Mr Hollins was justified in withholding the Vemco report until he and experts advising him had ensured that outstanding issues had been fully addressed. Although not a question of timing, Mr Hollins accepts that the July 2020 service charge demands could and should have been worded more sensitively and provided a greater level of detail and explanation.

- (iii) The Tribunal is not persuaded that the Applicants have established valid concerns in respect of certain management decisions taken by Mr Hollins. Mr Hollins has continued to pursue the application to the Building Safety Fund and it is now at a fairly advanced stage. He has also submitted an application to the Waking Watch Relief Fund. The Tribunal accepts that Mr Hollins acted reasonably in obtaining buildings insurance and setting up the waking watch: see, respectively, paragraphs 10-17 and 18-25 of the Tribunal's Decision dated 18 December 2020. The parties provide different versions of the events surrounding the repairs to swimming pool and sauna. The July 2020 service charge demands were issued because Mr Hollins did not have the funds to pay pressing invoices. In relation to the NHBC claim, Mr Hollins followed professional advice. Mr Hollins took the view that it was premature to initiate the statutory consultation procedure in respect of the fire alarm upgrade until it was clear that formal consultation was necessary.
- (iv) Mr Hollins accepts that there have been some shortcomings in relation to some management obligations; but these have now been addressed (or, in relation to the replacement of the car park shutters, will be addressed when funds are available).
- (v) The Tribunal is not persuaded that Mr Hollins has failed to communicate with the leaseholders: see paragraph 42(ii) above.

#### *Lack of confidence in Mr Hollins*

- 43 Ms Seitler argued that the appointment of a manager under section 24 is intended to be for the benefit of the leaseholders of a building; and that, even if the Tribunal found that there were no management failings on the part of Mr Hollins, where a significant majority of leaseholders, including the Applicant in the original application and the freehold owner, support the discharge of the 2020 Order, it is difficult to see how it could any longer be just and convenient – or for the benefit of any part involved – for the Order to continue in force.
- 44 The Tribunal accepts that 78 of the 93 leaseholders in the No 1 London Road development sent emails supporting the present application; and 69 of those leaseholders confirmed their continuing support after the hearing on 29 January 2021. (For some reason copies of those emails have not been provided to the Respondent; but the Tribunal can confirm that it has seen them.) The Tribunal also accepts that about 20 leaseholders have expressed their lack of confidence in Mr Hollins. The identical or close similarity of wording in those emails suggests an element of orchestration by those leaseholders actively involved in the application; and there is some evidence, albeit in anonymous emails, that some leaseholders were pressured into expressing their support. Nonetheless, it seems that there is a significant majority of leaseholders who support the application.
- 45 The leaseholders' emails do not clearly identify the basis of their opposition to Mr Hollins continuing as manager or the reason for any lack of confidence in him. It is probably not fanciful to question whether the leaseholders are at least in part reacting to the significant service charge demands issued by Mr Hollins. If so, it should be borne in mind that the underlying costs have been incurred because someone has grasped the nettle of addressing the serious issues facing the subject premises. It just happens that it is Mr Hollins who has grasped that nettle.



- 46 In any event, in the view of the Tribunal, the Applicants' argument affords too much weight to the subjective views of the leaseholders and effectively demands that those views should be conclusive. While the Tribunal accepts that the views of the leaseholders are not irrelevant, the Applicants' argument fails to take account of the judicial observations on the purpose of the statutory appointment of manager regime, namely that the effective management of the physical premises is the Tribunal's primary consideration: see paragraphs 36-39 above.

#### *Grounds for 2020 Order*

- 47 The Tribunal does not accept the Applicants' argument that the grounds on which the 2020 Order was made no longer apply and that the Order should therefore be discharged.
- 48 The predominant issue facing the subject premises at the date of the 2020 Order was fire safety. Mr Hollins has made very significant progress in addressing that issue but the task is not complete. In the view of the Tribunal, Mr Hollins would be the obvious person to continue and complete the task.

#### *Building Safety Fund/Waking Watch Relief Fund*

- 49 In the view of the Tribunal the issue of funding from the Building Safety Fund is arguably the most important consideration. If the application to the Fund made by Mr Hollins is successful, there may be a contribution in excess of £6 million to the costs of replacing the cladding on the subject premises. If the application to the Fund is not successful, those costs will probably have to be borne by the leaseholders. In those circumstances, it would be wholly unreasonable for the Tribunal to sanction a change of manager if that could prejudice the success of an application to the Fund.
- 50 The Applicants have repeatedly sought clarification from Homes England, the administrators of the Fund; and, based on the responses received, the Applicants assert that the risk of prejudice is 'limited'.
- 51 However, in the view of the Tribunal, that assessment is based, at least in part, on the Applicants' own speculation about the number of future applications, the progress of current and future applications, the allocation of current funding and the availability of additional funding.
- 52 Given what is at stake, the Tribunal is of the view that there would need to be overwhelming reasons for accepting even a 'limited' risk of losing out on funding from the Building Safety Fund.
- 53 Although the same issue arises in relation to the Waking Watch Relief Fund, the Tribunal accepts that the risk of losing out on funding is much less and the sums involved are rather smaller. The Tribunal therefore attaches only limited weight to the availability of funding from the Waking Watch Relief Fund.

#### Conclusion on the application to discharge the 2020 Order

- 54 The Tribunal does not accept the Applicants' allegations of significant management failings on the part of Mr Hollins. On the contrary, as already noted, the Tribunal finds that Mr Hollins has managed the subject premises effectively and efficiently.

- 55 The Tribunal accepts that a significant majority of the leaseholders have indicated their support for the present application; and some have stated that they lack confidence in Mr Hollins. However, the Tribunal does not accept the Applicants' argument that the views of the leaseholders alone should determine the outcome of the application. The Tribunal is required to give significant weight to the effective management of the physical premises; and the Tribunal is of the view that at the present time that is best fulfilled by confirming the appointment of Mr Hollins.
- 56 The Tribunal finds that it is impossible to be certain about the level of the risk of prejudice that might be caused if there is a change of manager, who will have to re-submit the Building Safety Fund application. In the view of the Tribunal, in the circumstances of the present case that uncertainty is probably sufficient in itself to justify a decision not to take the risk. For the reasons set out above, the Tribunal does not accept the Applicants' position that any risk is outweighed by the original grounds for the discharge application.
- 57 The Tribunal therefore dismisses the application to discharge the 2020 Order.
- 58 The Tribunal is reinforced in its decision by the indication that, although the discharge of the 2020 Order would have the effect of reinstating No 1 London Road Management Limited as manager of the subject premises under the terms of the Applicants' leases, the company would appoint Mr Chris Hulme as its managing agent. For the reasons given below, the Tribunal is not persuaded that Mr Hulme would be the appropriate person to take on that role.

#### Application to vary the 2020 Order

- 59 In the alternative, the Applicants seek the variation of the 2020 Order (i) by the replacement of Mr Hollins with Mr Chris Hulme as manager of the No 1 London Road development and (ii) by the deletion of paragraph 19 of the 2020 Order (which allows the manager to charge additional fees in respect of qualifying works and/or qualifying contracts).

#### *Replacement of manager*

- 60 As already explained, the Tribunal is satisfied that Mr Hollins has provided effective and efficient management of the subject premises since his appointment on 11 February 2020 and that he would be the appropriate person to continue and complete the task of addressing the current management issues.
- 61 By contrast, the Tribunal is not persuaded that Mr Hulme would be an appropriate person to take on that role.
- (i) Although Mr Hulme was involved with the subject premises at the outset and was a Director of Keates Hulme, who acted as managing agent for No 1 London Road Management Limited between 2013 and 2017, he is not currently involved in the management of residential property.
  - (ii) Mr Hulme indicates that the day-to-day management would be delegated to Rory Mack Associates. Yet, rather surprisingly, the 'property management proposal' specifically prepared by Rory Mack Associates claims no experience of, and involvement in, managing developments on the scale of the subject premises.

- (iii) Mr Hulme states that he has handled 'fire safety issues' but he accepts that he has no significant experience of the major issues currently affecting the subject premises.
  - (iv) Mr Hulme has no experience of the Building Safety Fund or the Waking Watch Relief Fund.
  - (v) Mr Hulme indicated that he would propose to spend two hours per week dealing with the management of the subject premises, which in the view of the Tribunal would be wholly inadequate to fulfil the management responsibilities.
  - (vi) Mr Hulme indicated that he might have difficulty in obtaining professional indemnity insurance at the level required by the 2020 Order; and, in any event, that the additional premium would need to be recovered from the leaseholders.
- 62 For the above reasons, the Tribunal dismisses the application to vary the 2020 Order by replacing Mr Hollins with Mr Hulme as manager of the subject premises.

#### *Additional fees*

- 63 Paragraph 19 of the 2020 Order provided –
- Where Mr Hollins undertakes qualifying works or enters into a qualifying contract that would come within the terms of section 20 of the Landlord and Tenant Act 1985, he shall be entitled to charge an additional fee, not exceeding 12.5% of the total cost and that fee shall be included in the service charge accounts.
- 64 The Applicants argued that, in reliance on paragraph 19, the leaseholders could be required to pay additional fees of more than £1 million for the proposed remedial works at the subject premises; and that such fees would be excessive and unreasonable. On that ground, they sought the deletion of paragraph 19.
- 65 Strictly speaking, the wording of paragraph 19 is qualified: the fees must not *exceed* 12.5% and, since the fees are recoverable as part of the service charge, even lower fees could be challenged before the First-tier Tribunal and would be subject to the 'reasonableness' test set out in section 19 of the Landlord and Tenant Act 1985.
- 66 Nonetheless, when drafting the 2020 Order, the Tribunal did not contemplate the incurring of costs that would even in theory entitle Mr Hollins to fees of £1 million or more.
- 67 The Tribunal indicated at the hearing that it would reconsider paragraph 19.
- 68 The Tribunal is of the view that Mr Hollins is entitled to some additional fees in respect of qualifying works and qualifying contracts but that it would be appropriate to introduce a sliding scale of fees depending on the costs incurred.
- 69 The Tribunal therefore determines that paragraph 19 of the 2020 Order should be replaced by the following paragraph –
- 19 Where Mr Hollins undertakes qualifying works or enters into a qualifying contract that would come within the terms of section 20ZA(2) of the Landlord and Tenant Act 1985 ('the 1985 Act'), and full recovery of the costs is conditional on compliance with the statutory consultation requirements, he shall be entitled to charge an additional fee,

calculated in accordance with the table below, and that fee shall be included in the service charge accounts.

Reasonable costs of works/contract	Additional fee
Works/contract costing up to £50,000	7.5% of costs
Works/contract costing between £50,000 and £100,000	7.5% of costs up to £50,000 plus 5.0% of costs over £50,000
Works/contract costing over £100,000	7.5% of costs up to £50,000 plus 5.0% of costs over £50,000 plus 1.0% of costs over £100,000

Where the consultation requirements are dispensed with pursuant to section 20ZA of the 1985 Act, the additional fee shall be discounted by 25%.

### **Summary**

- 70 The Tribunal dismisses the application to discharge the 2020 Order.
- 71 In respect of the alternative application to vary the 2020 Order –
- (i) the Tribunal dismisses the application to replace Mr Hollins with Mr Hulme as manager of the subject premises;
  - (ii) the Tribunal amends paragraph 19 of the 2020 Order as set out in paragraph 69 above.

### **Appeal**

- 72 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 73 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- 74 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

### **Section 20C application**

- 75 If the parties wish to make representations in relation to the section 20C application, they must do so in accordance with the Directions issued with this Decision.

22 February 2021

Professor Nigel P Gravells  
Deputy Regional Judge