



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

**Case Reference** : **LON/00BK/LVM/2018/0019**

**Property** : **Welford House, 114, Shirland Road,  
London W9 2BT**

**Applicant** : **James Erskine and 11 other long lessees  
of flats at Welford House, as set out on a  
list attached to the application form**

**Representative** : **Mr Carl Fain Counsel**

**Respondent** : **Mr Matthew Young –Former Manager**

**Representative** : **Mr Matthew Fraser Counsel**

**Type of Application** : **S24(4) Landlord and Tenant Act 1987 –  
determination of directions to the  
former manager**

**Tribunal Members** : **Judge John Hewitt  
Mr Michael Taylor FRICS**

**Date and venue of  
Hearing** : **26 April 2019  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **8 May 2019**

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**DECISION**

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**NB** In this Decision to a number in square brackets ([     ]) is a reference to the page number of the hearing files provided to us for use at the hearing. The prefix ‘A’ refers to the applicant’s file and the prefix ‘R’ refers to the respondent’s file.

**The issues before the tribunal and its decisions**

1. The issues before the tribunal were:
  - 1.1 Further directions to the respondent as regards the provision of accounts and supporting documents;
  - 1.2 Whether a penal notice should be endorsed on those directions or a provision made for a penal notice to be applied in the event of a default of compliance with them; and
  - 1.3 Issues as to costs
  
2. The decisions of the tribunal are:
  - 2.1 Further directions of the tribunal (as agreed with the parties at the hearing) are as follows;
    1. In respect of the final period of the appointment of the respondent as manager, namely 1 January to 7 June 2018, the respondent shall:
      1. by **5pm 13 May 2019** file with the tribunal and serve on the applicants (via their representative, Corker Clifford LLP) a list of expenditure incurred together with copies of supporting information; and
      2. by **5pm 28 June 2019** file with the tribunal and serve on the applicants a final account of his appointment as manager, which account shall set out the closing balances of funds held and any arrears payable by any of the lessees;
    2. The respondent shall by **5pm 13 May 2019** serve on the applicants copies of the supporting information on costs incurred in relation to the accounting period ended 31 December 2017. (Note: the actual accounts (as qualified) have already been served on the applicants.);
    3. The respondent shall by **5pm 13 May 2019** serve on the applicants copies of all invoices or fee notes issued to the manager whether by himself, Integrity Property Management Limited (Integrity) and /or Hatchford Limited (Hatchford) for professional and/or other services rendered and which have been debited to the service charge account in each of the years ended 31 December 2014, 2015 and 2016 which are currently in his possession;
    4. The respondent shall by **5pm 17 May 2019** write to the joint administrators of Integrity and request them to provide copies of any further documents referred to in direction 3 above which he does not currently have in his possession;

5. Upon receipt by the respondent of any documents mentioned in direction 4 above, the respondent shall within **7 days** serve copies of them on the applicants;
6. If the said joint administrators of Integrity refuse to provide copies of the documents mentioned in direction 4 above, the respondent shall within **7 days** of such refusal notify the tribunal and the applicants; and
7. If the said joint administrators of Integrity have failed to provide copies of the documents mentioned in direction 4 above within 28 days of the request for them, the respondent shall promptly inform the tribunal and the applicants.

The parties have permission to apply to the tribunal (with a copy served on the opposite party) in the event of alleged non-compliance with the above directions.

2.2 The above directions shall not be endorsed with a penal notice at this stage; and

2.3 As to costs:

2.3.1 The cost of time incurred or to be incurred by the respondent in giving effect to the above directions is not recoverable from the lessees through the service charge account;

2.3.2 The legal costs incurred or to be incurred by the respondent in connection with these proceedings are not recoverable by the respondent through the service charge account; and

2.3.3 An order shall be made (and is hereby made) to the effect that none of the costs incurred or to be incurred by the respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the applicants.

3. The reasons for these decisions are set out below.

**NB** Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing.

### **Background in brief**

4. Welford House, a block which comprises 16 flats and one office, all of which have been sold off on long leases.

5. The former freeholder, Ms Soraya Demeshghi, became the subject of a bankruptcy order and the freehold estate became vested in her trustees in bankruptcy, Ann Nisson and Matthew Carter of Mazars LLP.

Ms Demeshghi is also the lessee of two flats, A & B.

6. On 6 May 2014 the tribunal made a management order pursuant to which, the respondent, Mr Young, was appointed manager of Welford House (sometimes referred to as ‘the property’).

By a determination dated 1 June 2015 that management order was varied and effectively replaced by the order at [19-39] – ‘the MO’. The MO appointed Mr Young as manager (and as receiver of specified functions as set out therein) for a term until 5 May 2018 or further order, ‘subject to the liberty of any interested party to vary or discharge the order’.

A decision dated 3 May 2018 [40] records that by agreement with the applicants and Mr Young:

*“The appointment of the manager shall continue for one further year from 5<sup>th</sup> May 2018 but will be automatically discharged upon an RTM company exercising the RTM in respect of Welford House, if the RTM is exercised during that year. The discharge date will be precisely that date specified in any claim notice served pursuant to s80(7) of the Commonhold & Leasehold Reform Act 2002.”*

It was common ground that a claim notice was given and that it specified 7 June 2018 as the date on which the RTM company intends to acquire the right to manage the premises. Evidently, for practical purposes with which we are not concerned, the RTM company did not commence its management of Welford House until a few weeks after that date.

The tribunal concluded that the MO terminated on 7 June 2018 in accordance with the clear provisions of agreed decision made on 3 May 2018. There was no disagreement about this.

7. The MO envisaged that Mr Young would appoint Integrity to be his managing agent. Integrity was incorporated on 9 September 2005 on which date Mr Young was appointed a director. At Companies House Mr Young’s correspondence address is recorded as being at 1 Westferry Circus, Canary Wharf, London E14 4HD

On 2 November 2015 Hatchford Limited was appointed as secretary.

Other directors included:

<b>Name</b>	<b>Appointed</b>	<b>Resigned</b>
Beverly Jane Hurley	1 October 2017	5 May 2018
Roger Ian Johnson	20 April 2017	4 March 2018
Paul Gordon Simon	2 November 2015	22 March 2018

Hatchford was incorporated on 15 November 2013 on which date two directors were appointed, Mr Young and a Mr Paul Gordon Simon – who is recorded as being a solicitor.

8. The applicants have a number of issues with Mr Young concerning his role as manager and his stewardship of Welford House. Evidently Integrity

had a legal services division and provided legal services to Mr Young. Accounts for the three years ended 31 December 2014, 2015 and 2016 appear to show that services billed to the service charge account in those years whether by Mr Young, Integrity and/or Hatchford come to about £175,000. The applicants have made requests (in accordance with the MO) for copies of the invoices or fee notes supporting that expenditure but they have not been provided.

9. On 17 July 2018 Integrity went into administration. James Sleight and Peter Martin of Geoffrey Martin & Co of 1, Westferry Circus, Canary Wharf, London E14 4HD were appointed joint administrators.
10. By an application dated 13 December 2018 the applicants made an application to the tribunal [1]. The form used was 'Leasehold 2 Application made by a tenant for the appointment of a manager or for the variation of an order appointing a manager'. In section 7 'Order Sought' the applicants entered: 'Seek to enforce the order'. A statement of case was attached to the order. The applicants set out some history as they saw it. In terms of remedy the applicants sought to attach a penal notice to the MO, such that if certain requests were not complied with, they would be able to apply to the court.

The requests were:

1. Provision of the respondent's professional indemnity insurance cover;
2. Provision of the receipts – Schedule 2 paragraph 3 of the MO – Functions and Services provides:

*“Produce for inspection, within a reasonable time following a written demand by the ... Leaseholders, relevant receipts or other evidence of expenditure ...”*

The applicants asserted that no receipts had been provided for 2014 and some receipts for 2015 and 2016 were missing. A schedule of the missing receipts was annexed to the statement of case

3. Provision of the 2017 accounts – Schedule 2 paragraph 1 of the MO provides:

*“... distribute service charge accounts to the Leaseholders ... to include providing all paperwork to an accountant to enable the preparation of year-end accounts ...”*

4. Provision of a final account and details of unexpended monies held

Paragraph 7 of the directions attached to the decision dated 3 May 2018 provides:

*“ Within 28 days of the conclusion of the [MO], 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 serve copies of the report and accounts on the ... lessees, who may raise queries on them within 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties ... or, in*

*the case of dispute as  
any interested*

*decided by the Tribunal upon application of  
party.”*

The applicants complained the report provide by Mr Young entitled ‘Welford House – an exercise in futility’ was not compliant with the direction and that a final account and details of unexpended monies have not been provided.

5. Provision of a legal file. The applicants alleged that Mr Young or Integrity had maintained a legal file in respect of various issues at Welford House, including for example at least three costs orders made in 2015 totalling £24,976 against the former freeholder in favour of the lessees. The applicants sought the orders so that they might be enforced.

11. A case management conference was held on 7 February 2019. Mr Young did not attend. Evidently, Mr Young is now living and working abroad.

Directions are at [52]. With the benefit of hindsight some of the directions might not have been entirely appropriate and they were not complied with fully. We need not go into the details.

Suffice to say we had before us:

1. A file of relevant materials;
2. A very late application dated 10 April 2019 by Mr Young to strike out the substantive application before us. It was drafted by Mr Justin Bates of counsel. The gist was that whilst the tribunal had power to attach a penal notice to a management order, it had no jurisdiction to do so after the management order had expired. *Eaglesham Properties Ltd v John Jeffrey* [2012] UKUT 157 (LC) was cited in support.
3. An answer on behalf of the applicants dated 23 April 2019. It was settled by Mr Carl Fain of counsel. The gist was that the tribunal retains jurisdiction to give directions for completion of matters which arose during the course of the management order, including for example, as regards to final accounts, and that it retains its powers to attach a penal notice to any directions it may issue. *Eaglesham Properties* was cited in support.
4. A reply drafted by Mr Justin Bates on behalf of Mr Young dated 24 April 2019 which narrowed the legal arguments.

### **The hearing**

12. The application came on for hearing before us on 26 April 2019.

Mr Carl Fain of counsel represented the applicants.

Mr Young attended and was represented by Mr Matthew Fraser of counsel.

13. It was common ground that since the issue of the application some of the applicants' requests have been met. For example, details of professional indemnity insurance and the 2017 accounts have been provided. Other requests had been refined.

14. There was a discussion about jurisdiction and the strike out application. Mr Fraser asserted that the application form clearly stated that it was an application 'for the appointment of a manager ... or for the variation or discharge of an order appointing a manager'. The form cited s24 of the Act. The applicants sought neither remedy. It was accepted that two subsections might have some bearing (4) and/or (9).

Mr Fain submitted that the pre-printed form was used because it is the only form provided by the tribunal and it was plain that what was sought were orders or directions relating to the exercise by Mr Young of his functions and duties under the MO. Mr Fain also submitted that there was authority to the effect that attaching a penal notice to an expired management order in connection with such further directions or the performance of duties was permitted. This was contested by Mr Fraser.

A consensus was arrived at which avoided sophisticated legal arguments on jurisdiction. Both parties appeared to want to make progress to bring outstanding issues to a close as soon as possible.

The parties accepted that the tribunal had jurisdiction to issue further directions and that the tribunal had jurisdiction to attach a penal notice to some or all of those directions if it considered it appropriate to do so. Thus, whether the tribunal did or did not have jurisdiction to attach a penal notice to the expired MO did not require to be explored or decided.

Following a short adjournment the parties agreed the gist of the directions now required as set out in paragraph 2.1 above. These were further refined in general discussion.

Part of the difficulty that has arisen here is that some of the documents that Mr Young is required to produce are in the hands of the joint administrators of Integrity. Mr Young ought have had many of them. For example, in respect of fees for services rendered by Integrity to Mr Young, it was to be expected that Integrity would issue an invoice addressed to Mr Young. Mr Young would hold the original and Integrity would hold its file copy. Mr Young was not able to explain to us why he was not personally holding the originals of such invoices.

Given Mr Young's tribunal appointment it was his responsibility to ensure that the correct documentation was issued to him by the managing agents he chose to employ, Integrity. The more so where he was a controlling director of that company, and could doubtless have ensured that he was in possession of a full set of relevant documents before Integrity was placed into administration.

## **A penal notice**

15. The parties then addressed the tribunal on whether or not a penal notice should be attached to all of some of the agreed directions.

Although the precise terms of a penal notice was not discussed we proceeded on the basis it might follow the format regularly used in the civil courts along the lines:

*“If you the within-named [XYZ] do not comply with this order you may be held to be in contempt and imprisoned or fined, or your assets may be seized.”*

16. Mr Fain urged us to attach a penal to the directions, especially to those where the act(s) required are clearly in the control of Mr Young and which he has agreed to perform by the time/date(s) specified.

Mr Fain took us through some of the history, the substantial sums debited to the service charge account and the longstanding failure of Mr Young to provide a large number of supporting receipts. Mr Fain also drew attention to Mr Young’s failure to comply with some of the directions issued in February 2019.

Mr Fain also drew attention the late provision of the 2017 accounts and submitted that they were heavily caveated by the accountants.

Mr Fain further submitted that Mr Young had not approached the proceedings in a positive or recalcitrant attitude, rather that his only real positive step was a very late and unmeritorious strike out application.

Mr Fain also submitted that the applicants have yet again been put to the expense of a further application to the tribunal in order to get basic information to which they are plainly entitled. Mr Young took on the role of a tribunal appointed manager, a role to which there is attached important responsibilities which cannot be brushed aside lightly. He said it would unfair for the applicants to be put to the expense of a further application to the tribunal in the event of default and that a sanction should be applied automatically now – and without cost.

17. Mr Fraser submitted that it would be premature to attach a penal notice to any of the directions at this stage. Mr Fraser drew our attention to the fact that some of the documents are with the joint administrators who have not yet cooperated with access to them, possibly due to misunderstanding of the request made to them, that Mr Young is also in the hands of accountants who control the timing of the issue of the year-end accounts, that Mr Young now works and lives abroad and that apart from the collapse of his company, Integrity, he also gone through some difficult personal circumstances.

18. Mr Fraser also submitted that Mr Young has been helpful and constructive with regard to the agreed directions and that he will continue to do so. In the event of any default the applicants can write to the tribunal and the question of a sanction might be considered on the papers.

## **Discussion**



18. We have given careful regard to the closely argued and finely balanced submissions made by Mr Fain and Mr Fraser.
20. A tribunal appointed manager is an important role which carries significant responsibilities. Those responsibilities must be carried out in a proper and timely manner. Whilst we have some sympathy with Mr Young and the personal difficulties he has met, he has made things more difficult for himself by choosing to live and work abroad when he still has outstanding professional duties and obligations to fulfil here. We do not consider that Mr Young's choice to live and work abroad is an acceptable explanation for the delay in fulfilment of his obligations to the applicants and to the tribunal. We also consider that Mr Young could and should have taken greater efforts to obtain and control documents concerning the service charge account, copies of some of which had been requested by the applicants prior to Integrity going into administration
21. Mr Young's contribution to, and his demeanour during the course of, the hearing led us to conclude with some confidence that he fully understands his obligations and that he is committed to carrying them out.
22. The rival arguments were finely balanced but, on this occasion, we prefer those advanced by Mr Fraser to the effect that it is a little premature to attach a penal notice to the directions at this time.
23. We are satisfied that Mr Young fully appreciates the importance of the actions he has agreed to carry out in the agreed directions and that if he fails to do so it is inevitable that there will be consequences for him.

## **Costs**

### **Costs of compliance with the MO and the above directions**

24. Recital (5) of the directions order dated 7 February 2019 [54] records that the applicants agreed that the reasonable costs of the preparation of the service charge accounts by the Manager and an accountant for the years ending 2017 and [7 June] 2018 are recoverable by the Manager under the terms of the [MO].
25. Mr Fraser sought an order or direction that Mr Young's costs of the proceedings and his costs of complying with the agreed directions are recoverable by him through the service charge account.

Mr Fraser submitted that such costs fall under one or more of the following heads;

Paragraph 3 of the MO which sets out a number of powers vested in the manager. Paragraph (b) is in these terms:

*“appoint solicitors, accountants, architects, surveyors, managing agents and other professionally qualified persons as he may reasonably require to assist him in the performance of the functions and pay the reasonable fees of those appointed.”*

Paragraph 5 of Schedule One to the MO. This schedule sets out the services to be provided. Paragraph 5 provides:

*“5. To discharge all fees charges and expenses and any [VAT] thereon payable to any solicitor accountant surveyor valuer or architect or other professional or competent adviser whom the Lessor may from time to time reasonably employ in connection with the management and/or maintenance of the Property and in or in connection with enforcing the performance and observance and compliance by the Lessee and all other lessees of flats in the Property of their obligations and liabilities under this Clause including the collection of expenditure”*

Paragraph 20 of Schedule Two which provides:

*“20. Additional Fees for the provision of services at the Property that fall outside the scope of the day-to-day management will be charged at an hourly rate of £175 plus VAT.”*

26. It was not in dispute that the reasonable costs of the accountants in signing off the 2017 and 2018 accounts fell within paragraph 3(b) of the MO.

27. Mr Fain opposed the application.

Mr Fain submitted that the time spent by Mr Young on the finalisation of the accounts was not recoverable over and above his unit fee and he also opposed the suggestion that Mr Young’s time in dealing with these proceedings and the costs incurred by him on solicitors and counsel were recoverable through the service charge.

28. Mr Fain drew attention to Schedule Two of the MO. Its sets out the functions and services to be provided by the manager.

Paragraph 1 concerns preparation of an annual budget and administration of the service charge account and includes: *“... to include providing all paperwork to an accountant, to enable the preparation of year-end Services Charges accounts ...”*

Paragraph 3 provides:

*“3. Produce for inspection, within a reasonable time following a written demand by the Landlord or the Leaseholders, relevant receipts or other evidence of expenditure, and provide VAT invoices (if any) in an agreed form.”*

A number of other services are then set out, including a reference to major works.

Paragraph 19 provides:

*“Fees and Expenses*

19. *Fees for the above mentioned services (with the exception of supervision of major works) would be a fee of £300 plus VAT per annum for each flat for the period of the Order.”*

Mr Fain submitted that:

1. The time incurred by Mr Young in providing assistance with the year-end accounts and in producing copies of receipts or other evidence of expenditure is fully included in the unit fees charged by Mr Young to the service charge account and there is no separate or additional fee to which Mr Young is entitled;
2. There is no provision in the MO which entitles Mr Young to charge for his time in dealing with these proceedings;
3. The costs incurred by Mr Young in instructing solicitors and counsel in connection with these proceedings do not fall within paragraph 3(b) of the MO. They are not costs ‘reasonably required to assist him in the performance of his functions...’. They are costs incurred by him because he has failed to perform his functions; and
4. The hourly rate of £175 mentioned in paragraph 20 is not applicable because provision of accounting information to the accountants for year-end accounts and the provision of copy receipts or evidence of expenditure are expressly dealt with and thus are not ‘outside the scope of day-to day management’.

29. Mr Fain also made an application under s20C Landlord and Tenant Act 1985. Mr Fain submitted that if the costs incurred by Mr Young were recoverable through service charge it would be just and equitable to for the tribunal to make an order preventing him from doing so. In support of that submission Mr Fain argued that Mr Young was way over time in providing the 2017 accounts and he had not yet provided the 2018 accounts. The applicants had made several written requests for each set of accounts. The applicants had also made several written requests for certain supporting invoices, some of which go back to the accounts for 2014. Mr Young had a duty to provide these. He did not do so and the applicants have incurred costs in their application to the tribunal to obtain a remedy. Mr Fain argued that it would be most unjust to the applicants if they were required to pay Mr Young’s costs as well as their own when, as here, they were the innocent party.

30. In reply Mr Fraser submitted that the applicants had indicated they sought the year-end accounts and invoices with a view to making an application to the tribunal under s27A landlord and Tenant Act 1985. His preferred course was that Mr Young should be allowed to put through the service charge the costs that he believed he was entitled to put through and if there were any challenges, whether as to principle or as to amount, the s27A proceedings was the most appropriate forum for the challenge. He also submitted that was the more appropriate forum for the s20C application.

31. Mr Fraser argued that there was a live debate on what costs Mr Young can properly recover. He argued that costs of dealing with the final accounts and winding up Mr Young’s appointment as manager were part and parcel of the management order and were embraced within it. He further argued it was

implicit that Mr Young had authority to deal with issues arising from the management order even though the duration of the term of appointment had expired. Mr Fraser urged that all of the contentious issues on costs be left over until the final accounting at which time there would be clarity on not only what costs had had been incurred and why and the amount of the costs which had been incurred. Mr Fraser was keen to assure us that Mr Young was not trying to effect a double recovery.

## **Discussion**

32. In general terms we preferred the submissions made by Mr Fain. As to time spent by Mr Young in providing information to the accountants to procure the year-end accounts, this was remunerated under the base charge of £300 per unit per year and no further remuneration was payable for that service. Remuneration for such services is not payable at the rate of £175 per hour mentioned in Schedule Two, paragraph 20 because these services were not outside 'the scope of day-to-day management'.

33. As to Mr Young's time spent on these proceedings, that was spent by him because he had not complied with his duties and obligations under the MO. The time spent was not time spent on providing services or providing management, it was time spent by Mr Young in explaining why he had not complied with his duties and obligations. The tribunal did not find the explanation to be acceptable. Mr Young had failed to ensure that he had proper control of or access to the material documents required by him to ensure that he could fulfil his obligations to the tribunal and to the lessees.

34. We find that the legal costs incurred by Mr Young in connection with these proceedings were not incurred under paragraph 3(b) of the MO. That paragraph applies to professional fees incurred on matters 'to assist him in the performance of his functions'. The costs were not incurred to provide such assistance. They appear to have been incurred in connection with his failure to perform his functions.

35. We also find that those legal costs were not incurred under paragraph 5 of Schedule One. That paragraph is curiously worded. It appears it may have been lifted from a lease without any appropriate modification. The paragraph appears to apply to costs which the manager might reasonably incur in connection with the management and/or maintenance of the property and/or in enforcing covenants on the part of the lessee. We are not persuaded that the legal costs of these proceedings are concerned with the management and/or maintenance of the property and they are certainly not concerned with enforcing lessee covenants. On the contrary they are more concerned with enforcing the obligations of Mr Young.

36. We have therefore concluded that the legal costs in issue are not recoverable through the service charge under the terms of the MO. If we are wrong about that and if it were to be found that the costs are service charges payable within the meaning of s18 Landlord and Tenant Act 1985, we find it would be just and equitable to make an order pursuant to s20C for the reasons submitted by Mr Fain. The applicants have to bear their own costs of these

proceedings, it would be most unfair if they also have to bear the costs of Mr Young. We have therefore made a s20C order so that the position is clear.

Judge John Hewitt  
8 May 2019

### **ANNEX - RIGHTS OF APPEAL**

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify parties about any rights of appeal they may have.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to this tribunal - the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must arrive at the regional office within 28 days after the date on which the tribunal sends out to the person making the application the written reasons for the decision.
4. If the application is not made within the 28-day time limit, such application must include a request for 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.
5. The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. 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.
6. If the tribunal refuses permission to appeal, a further application for permission may be made directly to the Upper Tribunal (Lands Chamber)