



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

<b>Case Reference</b>	:	CHI/29UN/LAM/2019/0008
<b>Property</b>	:	Northumberland Court, Northumberland Avenue, Margate, Kent, CT9 3BS
<b>Applicant</b>	:	Miss Grace Neal of Flat 33 and 11 other leaseholders as specified in the Application form
<b>Representative</b>	:	Mr Julian Smith & Miss Grace Neal
<b>Respondent One</b>	:	Northumberland Court Residents (Cliftonville) Limited
<b>Representative</b>	:	Mr Phillip Porter (Director)
<b>Respondent Two</b>	:	Northumberland Court (2008) Ltd
<b>Representative</b>	:	Mr John Coad (Director)
<b>Type of Application</b>	:	Appointment of Manager Section 24 of the Landlord and Tenant Act 1987 (1987 Act)
<b>Tribunal Members</b>	:	Judge Tildesley OBE Mr R Athow FRICS Mr P A Gammon MBE
<b>Date and venue of Hearing</b>	:	7 August 2019 Margate Law Courts, The Court House, Cecil Square, Margate, Kent CT9 1RL
<b>Date of Decision</b>	:	27 August 2019

---

**DECISION**

---

## **Decisions of the tribunal**

- (1) The Tribunal determines to dispense with a notice under section 22 of the 1987 Act because it is satisfied that it would not be reasonably practicably to serve such a notice.
- (2) In accordance with section 24(1) Landlord and Tenant Act 1987, Mr Mark Blooman MRICS of B2 Chartered Surveyors of 9/27 The Broadway, London N8 8DR is appointed as Manager of the Property known as Northumberland Court, Northumberland Avenue, Margate CT9 3BS (the Property).
- (3) The Order shall continue for a period of two years from 16 September 2019. If any party or parties interested wish to apply for an extension of the Order they are encouraged to do so at least three months before the Order expires.
- (4) The Manager shall manage the Property in accordance with
  - a) the directions and schedule of functions and services attached to this Order;
  - b) save where modified by this Order, the respective obligations of the Landlord and the Lease whereby the Property is demised by the Landlord and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
  - c) the duties of a manager set out in the Service Charge Residential Management Code (“the Code”) (3<sup>rd</sup> Edition) or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development act 1993.
- (5) The Manager shall register the Order against the Landlord’s registered title as a restriction under the Land Registration Act 2002 or any subsequent Act.

## **The Application**

1. The Applicants seeks an order appointing Marc Blooman MRICS as a Manager under Section 24 of the Landlord and Tenant Act 1987 (“the Act”). The Applicants are also requesting an order to dispense with the requirement to serve a section 22 Notice.
2. On 24 June 2019 the Tribunal issued directions to progress the application. Northumberland Court 2008 Ltd, the freeholder of the property was added as a Respondent.

3. Mr Julian Smith of Penthouse 1 and Miss Grace Neal of Flat 33 represented the Applicants. Mr Phillip Porter of Flat 2 and director represented the First Respondent. Ms Kirsty McChesney of Flat 3 assisted Mr Porter and spoke for the leaseholders who supported the First Respondent, Mr John Coad, director, represented the Second Respondent. The parties were given the opportunity to ask questions of each other.
4. The Applicants prepared the bundle of documents. References to the page number of the documents in the decision are in [ ]. Various documents were handed in during the hearing which were added to the bundle.
5. Mr Marc Blooman MRICS the proposed Manager spoke to his management plan [152-162]. The parties were given the opportunity to ask questions of Mr Blooman. The Applicants produced a draft management order [503 -513].
6. Following the hearing Mr Smith and the Directors of the First Respondent made further representations in writing. The Tribunal did not request additional representations and advised the parties that they would be disregarded for the purposes of this decision.

### **The Background**

7. The property comprises 42 flats and is sited on a corner plot just back from the seafront, overlooking Palm Bay. The main frontage is to Northumberland Avenue (East elevation), the North elevation fronts Palm Bay Avenue, and the South elevation fronts onto Beresford Gardens.
8. The main part of the building is four storey plus one flat in the basement. It is rendered and colour-washed and was built about 90 years ago with a steel frame construction, the steelwork being encased in either concrete or brickwork. At some later date an annexe was added which is over three floors with a central vehicular access underpass. It is understood that originally the premises were constructed as an hotel. Many features of the main communal areas incorporate parts of a liner (believed to be SS Mauritania) including the revolving entrance doors, wood panelling and ornamental plastered ceiling to the foyer, and the original lift from the ship. Most of the remaining common parts were of traditional construction and style.
9. The freehold of the property is owned by Northumberland Court (2008) Limited (the Second Respondent) which is registered at HM Land Registry under title number K21230. The Tribunal understands that the members of the Company comprise 26 leaseholders of the flats in the building.

10. The first Respondent, Northumberland Court Residents (Cliftonville) Limited (“The Residents’ Company”), holds a head lease of the property for a term of 999 years from 25 December 1950.
11. The Residents’ Company in turn has granted under leases for terms of 999 years less one day from 25 December 1950 to the owners of the flats<sup>1</sup>. Under the terms of those leases, the Residents’ Company is required to insure the property, to keep the property in a good state of repair and decoration, to keep the hall stairs, landings and passages properly carpeted and cleaned and keep the lifts in good order. In return for the services the leaseholders are required to contribute to the costs of the Residents’ Company by way of a service charge.
12. On 10 April 2019 the Tribunal heard an application from the Residents’ Company to determine an interim service charge for the year ended 30 June 2019. Prior to that hearing there was a shareholder meeting on 13 February 2019 which sought to replace the then directors of the Resident’s Company, Miss Neal and Mr Dobbe with Mr Porter and Mr Berritt. The latter considered that they had been appointed as directors and applied to adjourn the hearing which initially was granted. The hearing was reinstated following objections from Miss Neal and Mr Dobbe.
13. On 25 April 2019 the Tribunal issued a summary decision determining the interim service charge for the year ended 30 June 2019 at £192,230 which was followed by a fully reasoned decision on 8 May 2019 (case ref. CHI/29UN/LIS/2018/0058).
14. The Tribunal in its decision recorded that the building required substantial investment to prevent further deterioration to the fabric of the building, caused by its construction and exposed position overlooking the Thames Estuary and North Sea. The Tribunal described that the directors of the Residents’ Company had over the years since 1988 commissioned ten reports on the condition of the property which had highlighted priority works to be carried out but the directors had not acted on those reports. The Tribunal highlighted that budgets had been prepared during those years but there had been ongoing arrears which meant there was not the funding for the intended works. The difficulties over funding had been compounded because the terms of the underleases did not allow the Residents’ Company to maintain reserves.
15. The Tribunal’s determination included a sum of £100,000 for programmed works which it said was long overdue. The Tribunal concluded its decision with the observation that it was aware there may be a change of directors. If new directors were appointed they

---

<sup>1</sup> The under lease for Flat 12 is for 99 years less one day from 31 May 1961

would be bound by the budget set, and the programme of works upon which it was set.

16. On the 5 May 2019 the change in directors took place at an EGM of shareholders with the election of Mr Porter, Mr Berritt, and Mr Gould.
17. On 13 May 2019 Miss Neal and Mr Dobbe, the former directors, recorded their handover in an e-mail to the new directors. They highlighted the following issues:
  - Validation of the 10 year maintenance plan by the Tribunal.
  - Priority building works: concrete tap test, fire risk assessment works, underpass steel repair, works to make the building watertight, the full structural survey.
  - The risk of losing the insurance cover due to the state of the building.
  - Historical service charge arrears.
  - The position of the current managing agents.
18. On 11 June 2019 12 leaseholders applied to the Tribunal for an Appointment of Manager under section 24, and for dispensation of service of the section 22 notice. The application named Miss Neal as their representative. They said that the application was urgent because there was a real risk that the existing building insurance would not be renewed at the end of the August, and tangible evidence that the directors of the Resident's Company were intent on a path of ignoring the steps required to address the priority building works, and of initiating a dispute with the current managing agents at great financial risk to the company.
19. The directors of the Resident's Company disputed the application saying that they had not been given time to get to grips with the various issues facing the building. The directors believed that the application was not about competence but about personalities and personal enmity towards other residents of the building.
20. The directors were supported by 23 leaseholders [440-482] and the directors of the freehold company [483 – 489].

### **The Issues**

21. The Tribunal identified three issues:
  - Whether the landlord is in breach of an obligation owed by it to the leaseholders under their leases?

- Whether to dispense with the requirement to serve a section 22 Notice?
- If yes whether it is just and convenient to make an order appointing a Manager whether interlocutory or final?

## **The Findings**

22. The Tribunal sets out its findings on the matters identified by the Application. The Tribunal does not intend to give an account of the evidence given at the hearing save where there is a clear dispute. The Tribunal's overall view of the evidence was that there was good measure of agreement between the parties on the salient facts. The dispute was about whether the current directors should be given an opportunity to take matters forward.

## **Insurance**

23. The Resident's Company had paid the outstanding balance of the premium (£3,002.94) due until the current contract for insurance expired on 14 August 2019. Bridges Insurance Brokers provided a copy of the receipt dated 14 June 2019 [379-381]. Mr Porter informed the Tribunal that this was paid by Mr Kelleher of Flat 21 as a "set off" against his current arrears for service charges.
24. Bridges Insurance Brokers obtained a renewal quotation for insurance for the building covering the period 15 August 2019 to 15 August 2020 from the current insurers, Covea Insurance, in the sum of £19,283.66 dated 11 July 2019 [383]. On 29 July 2019 Mr Henry Coates of Bridges Building Insurance emailed Mr Porter with a revised quotation from Covea Insurance with a reduced premium of £18,814.71.
25. On 25 July 2019 Mr Coates e-mailed Mr Porter confirming that Covea had offered renewal of the policy without imposing additional terms or conditions, and that no endorsements had been applied to the policy. Mr Coates also referred to previous email correspondence between the Insurance Brokers and Covea in February 2019 regarding the recommendations of McFarland's report [348-359]<sup>2</sup>. Mr Coates stated that Covea had indicated that it was not qualified to make a judgment and further advice should be

---

<sup>2</sup> A Report Commissioned in 12 February 2019: "A Cursory Visual Inspection and Way Forward" which identified ongoing corrosion with the main structural steel frame, and numerous defects in the reinforced concrete/ render elements. The recommendations included a detailed inspection and structural analysis of the underpass area by a Chartered Surveyor, and undertake non-destructive testing of the concrete elements.

sought from the consultants. Mr Coates added that Covea made no mention of the need for a hammer test.

26. Mr Smith for the Applicants did not challenge the authenticity of the receipt for the outstanding balance and of the renewal quotation. Mr Smith's objection concerned the "Real Estate Statement of Fact" which under the heading of "The Premises" contained declarations by the insured that all premises are in good state of repair and free from damage or defect of any kind. Mr Smith referred to Mr Porter's admission in the hearing that the building was not in good state of repair. Mr Smith was of the view that Covea would not meet a claim if one was made under the insurance policy because of discrepancies with the declaration on "The Premises".
27. The Tribunal concludes that the Resident's Company had supplied evidence that the property was currently insured, and that the policy would be renewed for the coming year provided there were funds to pay the premium. The Tribunal noted that Mr Coates of Bridges Insurance Brokers had been made aware of the condition of the property [559-568], and the Tribunal assumes that Mr Coates would have dealt with the risk identified by Mr Smith before he presented the terms of the renewal to the Resident's Company<sup>3</sup>.

### **Priority Building Works**

28. The previous directors commissioned a fire alarm report dated 19 December 2018 [288-298] which recommended amongst other matters the installation of a new fire alarm system, and a Fire Risk Assessment dated 17 January 2019 [300-320]. A Notice of Intention to carry out fire safety works was issued on 22 December 2018 [373]. Bampton's, the managing agents, had allocated £7,800 to £10,000 for repairs to the fire alarm [179]. The current directors engaged AM Electrical Services to carry out the works to the fire alarm which were completed in the week commencing 8 July 2019 at a cost of £2,765. Mr Smith acknowledged that the fire alarm works had been done but questioned whether the specification for those works adequately covered the risks identified in the fire alarm report. The Applicants' response pointed out that AM Electrical Services declined to participate in the tender process, and that it would appear that AM Electrical Services' estimate did not make allowance for replacement of faulty detectors, sounderbase, PSU or the repeater panel. Finally the Applicants' cited that Zensor

---

<sup>3</sup> Mr Coates had originally offered to supply a statement to the Applicants regarding the insurance position of the Tribunal. According to Miss Neal, Mr Coates subsequently withdrew the offer because the Residents' Company would not give him permission to disclose information belonging to the Company. On 24 July 2019 the Applicants applied for a witness summons against Mr Coates. The Tribunal declined to issue the summons because it was a serious step to take and reserved its position until after the hearing on 7 August 2019.

Security Limited had provided a quotation of £4,658.40 inclusive of VAT. The Applicants questioned whether the current directors had achieved the bargain which they claimed they had in respect of the fire safety works [534].

29. The McFarland's report concluded that there were numerous defects in the reinforced concrete/rendered elements including cracking, delamination and spalling. Further the defects posed a health and safety risk due to the potential for falling material. In an email dated 26 February Enda McKenna of McFarland reported to Bamptons that "there were numerous instances of loose concrete at high level as outlined in the report. These should be addressed immediately as they pose a risk of falling to ground level. It is also likely that numerous other delaminated areas exist which have the potential to fall which are not visible from ground level" [563]. The Applicants stated that "there have been instances of when loose concrete has fallen from the building, and in at least one case landed on a resident's balcony. Fortunately to date no-one has been injured" [523].
30. McFarland recommended a non-destructive testing of the concrete elements. The works would include a delamination survey which would also make safe and remove any loose material [356]. The previous directors undertook a section 20 consultation process for concrete and render inspection and testing. A notice of intention was sent on 15 February 2019 [367]. A statement of estimates giving quotations from two contractors was issued on 28 March 2019. The statement of estimates recorded that no written representations had been received to the notice of intention [369].
31. Mr Porter said that there had been two reports of falling masonry: Flat 20: render (18" x 12") had fallen arising from a disrepair with the expansion joints; Flat 30: the falling masonry was in fact a piece of Sandtex paint. Mr Porter pointed out that Northumberland Court was surrounded by a garden with flower beds and the public thoroughfare was some distance away from the building. Mr Porter acknowledged that the "building was in a terrible state of disrepair".
32. On 7 March 2018 Salluz, Construction Consultants carried out an investigation of two steel columns and one beam supporting the underpass adjacent to the entrance [286]. Salluz discovered that there was high level of corrosion to one of the steel columns and to the main beam with propping installed as a precautionary measure. The corrosion to the adjacent column was not significant.
33. McFarland reported that there was an ongoing corrosion issue with main structural steel frame. McFarland observed further evidence of active steel frame corrosion through brickwork cracking within



the underpass as well as on the furthestmost west elevation [356]. In the email dated 26 February 2019 Enda McKenna noted that the corrosion of the steel frame within the underpass was also of concern [563]. McFarland recommended that a Chartered Structural Engineer undertake a detailed inspection and structural analysis of the underpass area [350]. The previous directors conducted a section 20 consultation for steelwork, inspection and testing which was combined with that for the non-destructive testing of the concrete. The statement of estimates was dated 18 April 2019 providing quotations from two contractors, and recorded that no written observations on the notice of intention were received [371].

34. The current directors have caused work to start on the steel works for the underpass. Brissenden Roofing have removed the brickwork exposing the steel beam at a cost of £890. Stonaco Fabrications have been engaged to supply, fabricate and install a galvanised goal post frame for the underpass at a cost of £2,414 and to supply and fit cladding to the steelwork at a cost of £1,585.
35. Mr Blooman who is a qualified building surveyor inspected the archway in connection with this application. Mr Blooman expressed concern that works had been initiated without first carrying out a survey of the underpass area by a structural engineer. Mr Blooman's initial view was that the footing for the supporting steel column may be inadequate, and that the crack stretched to the back of the underpass which posed a serious risk of substantial fall of building material. Mr Blooman noted that the steel structure was the only support for the flats above the archway. Mr Porter accepted Mr Blooman's evidence.
36. The Tribunal concludes that the building is in a state of disrepair which has been occasioned by a collective failure of past and present directors of the Resident's Company to meet its repairing and maintenance obligations under the lease in a systematic and responsible manner. The Tribunal finds that the current directors have not addressed the priority issues of defects in the concrete/rendering elements, and corrosion in the steel frame particularly in relation to the archway in a rational way. They appear to be ignoring the expert advice previously received by the Company, and the clear pathway for taking the priority issues forward as set out in the section 20 consultations. The Tribunal finds that the directors' decisions are unduly influenced by their deep mistrust of Bampton, the managing agent, and a belief that they can do the works cheaper emboldened by their success with the fire safety works. The inherent risk with their approach is that they embark upon inappropriate works which have not been properly investigated resulting in higher costs for leaseholders as evidenced by their approach to the steel repairs to the underpass. The Tribunal considered that the directors appeared to be

underestimating the potential risk of falling concrete and rendered elements. Mr Porter's reference to the protection offered by surrounding garden and flowerbeds did not inspire the Tribunal's confidence in their appreciation of the problem identified by the McFarland report.

### **Service Charges**

37. In September 2018 the Residents' Company demanded an estimated service charge in the sum of £192,230 in accordance with the Planned Maintenance Schedule 2018 – 2017 [262]. In October 2018 before he was appointed as a director, Mr Porter circulated an open letter to all leaseholders giving an explanation of the section 20 consultation process. Mr Porter advised the leaseholders that the demand was null and void because of the Company's failure to observe the section 20 procedures. Mr Porter urged all shareholders to ignore it and refuse to pay anything until such time the directors adhere to comply with the law or the Tribunal ruled against his advice. Mr Porter added that he recognised that certain works needed to be carried out on the building, and sooner rather than later, and that he did not necessarily disagree with the overall expenditure [59].
38. On 25 April 2019 the Tribunal confirmed the demand for estimated service charges in the sum of £192,230 and that the new directors would be bound by the budget. There is no requirement to consult in respect of the costs of intended works recovered by way of interim service charge<sup>4</sup>.
39. As at 14 May 2019 the service charge arrears stood at £121,075.48, of which about £20,000 comprised long term and short arrears owed by four leaseholders.
40. The Applicants stated that there was no evidence that the new directors were taking action to collect the outstanding arrears. The Applicants believed that the current directors had a conflict of interest as some of them had not paid the service charges lawfully demanded by the Residents' Company. The Minutes of the Board Meeting of 24 May 2019 recorded uncertainty about whether the leaseholders should pay the service charge demand and whether an appeal should be made against the Tribunal decision [135]. The Applicants also expressed concern about the failure of the Board to set up a bank account to hold service charge monies.

---

<sup>4</sup> In *23 Dollis Avenue (1998) Ltd v Vejdani* [2016} UKUT 0365 it was held that the limitation in s.20 to the contribution payable by the tenant is referable to costs incurred by the landlord in carrying out the work rather than in respect of work to be carried out in the future. It is not necessary that there should be a valid consultation process before a sum in excess of £250 can be recovered by way of an interim service charge in respect of intended works.

41. Mr Porter explained that the prevailing culture at Northumberland Court up to 2013 encouraged by the Board was to keep service charges low with the result that leaseholders were reluctant to pay them. Mr Porter said that it took determined efforts on the part of successive Boards to change the culture of non-payment.
42. Mr Porter stated that the Board of the Residents' Company accepted the Tribunal's decision and steps had been taken to collect service charge arrears. Mr Porter reported at the date of the hearing that around £40,000 had been received by leaseholders in connection with the outstanding service charges.
43. Mr Porter supplied a copy of a letter dated 31 July 2019 sent to all leaseholders in respect of the service charge arrears which stated:

“As you will have seen from the decision of the FTT that was sent to you by Bamptons earlier this year, the FTT decided that the budget of £192,230 set for the year to 30 June 2019 was reasonable.

Already we have found from the work that we have received quotes for and carried out there has been considerable saving over the amounts presented to the FTT.

Accordingly we are revisiting all the quotes received from the building upon which Price-Lilford and others have priced the works. This will take some time but it does not mean that the demand sent to you by Bamptons and which we enclose again is not payable. What does it mean is that although we are asking you to pay this amount to us now there may well be an underspend credit (refund due to you at some time in the near future) .....

At the present time you have arrears of ..... Please can you therefore make payment of this amount now so that we can at least get on with more of the work required by the FTT before the end of our fiscal year.....

Should you have difficulty in paying these arrears, please contact one of us signed below or seek independent financial or debt advice for example .....

44. Mr Porter said that the Board had recently set up a bank account with Lloyds for the service charges. Mr Smith raised the issue of whether the account had the necessary insurance to protect receipts in excess of £85,000. Mr Berritt resolved this matter during the hearing, and reported that this had been increased to £100,000.
45. The Tribunal acknowledges that the current directors have very recently taken steps to start collecting the arrears. The Tribunal is not convinced that they are fully committed to the task and that

they may have raised expectations that they may be able to secure significant savings in the estimated costs of the works which they may be not able to fulfil.

### **Dispute with Bamptons, the Managing Agent**

46. The Applicants expressed concern that the current directors' ongoing dispute with Bamptons, the managing agent, was putting an additional burden of financial risk on the Resident's Company.
47. The Applicants evidenced the Agreement with Bamptons for the management of the property which was dated 2 February 2019 for term of one calendar year from 1 March 2019 to 28 February 2020. The contract was signed by Mr Dobbe for the Residents' Company and Ms Russell for Bamptons [414-417]. The contract at clause 11 sets out the means for terminating the contract early either by giving three months notice after 1 September 2019 or by mutual agreement.
48. On 5 June 2019 the Board held a meeting to discuss the continuation of Bamptons as managing agents. At the end of the meeting the Board agreed unanimously to dismiss Bamptons on the grounds of misconduct. The minutes at [135-136] recorded the Board's reasons for the decision.
49. Mr Smith referred to emails from the Company's legal adviser advising the Board of the risks that it faced in asserting a fundamental breach of contract<sup>5</sup>.
50. Mr Porter said that the Board was confident of its position regarding the dismissal of Bamptons and would welcome the opportunity to argue it in Court.
51. The Tribunal has no wish to embroil itself in the rights and wrong of the Board's dispute with Bamptons. The Tribunal makes two observations. First, the Board's judgment on the way forward is obscured by its strong mistrust of Bamptons, and its belief that the present difficulties have been caused by Bampton's alleged mismanagement. Second, the Board no matter how strong its case is against Bamptons should weigh its options in respect of the dispute in the light of the worse case scenario, and ask itself whether it is prepared to run that risk.

---

<sup>5</sup> The Tribunal has not set out the advice as it may be subject to legal privilege. The Tribunal observes that privilege was not asserted by the Respondent.

## **The Plans for Managing the Property**

52. The Applicants' case is based on a belief that the Directors of the Residents' Company lack the legal, technical or practical experience to manage such a complicated building, and that in fact there is no-one in the building who can manage the company due to the complexity of the outstanding issues, the rifts between residents, flat owners, Bampton, and the current or previous directors.
53. The Applicants contended that the directors needed to defuse the current febrile atmosphere and build a level of trust between the different constituencies. According to the Applicants, the building has suffered internecine fighting over the last decade. The Residents' Company and directors have tried self management at least four times with managing agents. The Applicants stated that the lack of legal and building management knowledge amongst the Resident's Company has rendered either their management of the managing agent's ineffective or where they have tried as enthusiastic amateurs they had made the situation worse. The Applicants considered that an appointment of a new managing agent would suffer the same fate as previous ones.
54. The Residents Company blamed the Applicants for creating the febrile atmosphere in the building. The directors believed that the Applicants had put their interests first above those of the permanent residents who can only just afford to pay their way.
55. The Residents' Company said they would appoint Propmanco (Block Management Company conducted by Hemispheres Ltd) to take over the day to day management of the building if the Tribunal decided not to appoint a manager. The Residents' Company explained that Propmanco was an established local agent which had experience of managing blocks of similar size to Northumberland Court. A letter from Jonathan Dahms of Promanco dated 7 August 2019 was admitted in evidence. The letter explained what it would do if appointed as managing agent. The plan proposed was based upon the budget set by the Tribunal. Mr Smith pointed out that Promanco was not a member of RICS and did not carry ARMA accreditation. Mr Smith, however, accepted that his conversation with Mr Dahms was constructive and considered.
56. The Residents' Company stated that whilst the Board is made up of quite elderly gentlemen there was considerable knowledge of building remedial work among them and this was demonstrated for the short time of 2016 and 2017 whilst waiting for Bampton to take over. Mr Porter described the role he took in the successful dismantling of the fire escape. The Tribunal considers Mr Porter's career as a loss adjuster would have equipped with the necessary

skills to co-ordinate large scale building projects. Mr Porter, however, accepted that he was “too old and too ill” to continue with the current punishing schedule of 10 hours a day on the management of the building.

57. The Tribunal finds that all parties accept, although they differ on the causes, that there is a febrile atmosphere within the building riven by factional conflict and mistrust. The Residents’ Company’s decision to appoint a managing agent and its suitability is a matter for the Board. The Tribunal, however, notes that such arrangements have been tried on no less than four occasions in the past with little or no success. Mr Porter, the lynchpin of the Board, accepts that he needs to pass the baton on to others and cannot continue with the current demands expected of him.

### **Consideration**

58. Before considering the various legal aspects raised by this application the Tribunal sets out the agreed factual context for the application. The parties agreed that

- The property is in significant state of disrepair.
- There are substantial service charge arrears, and a history of not setting realistic service charges to meet the landlord’s obligations under the lease.
- The terms of the present leases do not permit the landlord to hold reserves.
- There exists a febrile atmosphere between the residents at the property riven by factional conflict and mistrust.
- The Residents’ Company has over the years managed the property by engaging the services of different managing agents with little or no success, or inroads towards reducing the amount of disrepair or arrears.

59. This Application has been presented on the basis that the current Board is failing in its responsibilities towards the leaseholders. The factual context highlighted above showed that there has been a systematic failure by the Residents’ Company in discharging its responsibilities over a significant period, and that its failure is a collective one for which all past directors must bear some responsibility.

60. The difficulty for the current directors is that the Tribunal is required to look at this Application through the prism of landlord and leaseholder. The effective landlord in this case is the Residents' Company, which means that the Tribunal views the current board's actions in the context of the legacy that it has inherited. Many leaseholders have justifiably said that the present Board should be given the opportunity to prove itself. The Tribunal, however, is required to ask itself "*Whether the Resident's Company has failed in its obligations to the leaseholders which is not limited to the actions of the current board. If it has, should the Company be allowed to continue with the management of the property?*"
61. The Tribunal starts with the question of whether one or more of the statutory grounds exist for the appointment of Manager. The grounds are set out in section 24(2) of the 1987 Act and are, in summary:
- a) breach by any "relevant person" of an obligation owed by him to the tenant under his tenancy and relating to management;
  - or
  - b) unreasonable service charges or
  - c) unreasonable variable administration charges; or
  - d) failure by any "relevant person" to comply with a code of management practice and
  - e) "other circumstances" where it is just and convenient to do so.
62. There is no requirement that any breach under any of the s.24(2) grounds needs to be material. The need to establish a breach is in effect a threshold criterion. Once the threshold has been crossed the Tribunal must consider the question of whether it is "just and convenient" to make the order.
63. The Tribunal reminds itself that it is considering the obligations of the Resident's Company and whether the Residents' Company has breached its obligations under the lease. The Tribunal's enquiry is not confined to alleged breaches by the current board.
64. Mr Porter for the current Board agreed that the property was in a state of disrepair and this had arisen from the Residents' Company's failure to fulfil its repairing obligations under the lease. There is no requirement under the lease or otherwise to put the Residents' Company on notice before its repairing liability arises<sup>6</sup>. The Tribunal is, therefore, satisfied that the requirements of section 24(2)(a)(i) have been met.

---

<sup>6</sup> This is a property where the landlord has retained possession of the common parts and of the building that does not part of the demised premises and controls all services *Edwards v Kumarasamy* [2016] UKSC 40.

65. The Tribunal finds that the Residents' Company's management of the property has been erratic and inconsistent over a long period of time. The Company has dispensed with services of four managing agents and is presently in dispute with the current managing agent. The Company has allowed leaseholders to avoid their responsibilities to pay the service charges. Mr Porter remarked that previous Boards had deliberately kept service charges low and permitted leaseholders to build up arrears of services charges. In the Tribunal's view this amounts to "other circumstances" under section 24(b) which would merit the appointment of Manager if it is just and convenient to do so.
66. The next question for the Tribunal is whether it should dispense with the preliminary notice under section 22. The purpose of this notice is to give the landlord the opportunity to put matters right. The Tribunal may dispense with the requirement to serve such a notice if it is satisfied that it would not be reasonably practicable to serve such a notice on the landlord. The dispensing power under section 22(3) would appear to cover two main situations: where the landlord is missing and where the application is made urgently and an interim order is sought<sup>7</sup>.
67. In this case the Applicants argued that the dispensation was justified on grounds of urgency and that if the notice was dispensed with they preferred a full order rather than an interim one.
68. The question of urgency is considered in the context of the circumstances that existed at the time the Application was made on 11 June 2019 and the developments that have occurred since the making of the application.
69. On the 11 June 2019 the Applicants stated that the building faced a catastrophic loss of insurance, no steps had been taken to collect the service charge arrears, the board had commenced steps to terminate the contract of the managing agent which carried a financial risk for breach of contract, and that the board was ignoring the Tribunal's decision by managing the property without professional help and by not implementing the programmed works.
70. The evidence demonstrated that the facts relied upon by the Applicants at the time of making the application were correct. The Application prompted the Residents' Company to take action but with variable outcomes. The Tribunal is satisfied on the evidence before it that the Company has secured insurance for the building for the 12 months commencing 15 August 2019. The Tribunal accepts that the Company has completed the immediate fire safety

---

<sup>7</sup> 23-32 Service Charges and Management 4<sup>th</sup> Edition Tanfield Chambers.



works. The Tribunal remains unconvinced with the Company's commitment to collect the service charge arrears. The Company has only just opened a trust bank account and Mr Porter referred to a "set off arrangement" with one leaseholder with substantial arrears. The Tribunal finds that the Board has adopted an uncompromising position in respect of its dispute with the managing agent despite advice on the potential risks. The Tribunal considers that the Board has ignored the expert advice to obtain a structural engineer's report on the underpass and gone ahead with works that may prove to be inadequate or unsatisfactory and result in greater cost to leaseholders. The Board has not implemented the recommendations of the McFarland report for dealing with the risk of falling concrete and rendered elements.

71. The Tribunal finds that the Applicants have established that it was urgent to proceed with the application for appointment of manager without serving a section 22 Notice. When the urgent circumstances are viewed in the overall context of the Residents' Company's inconsistent and erratic management of the property over a long period of time the Tribunal is satisfied that it would not be reasonably practicable to serve a section 22 Notice.
72. The next question for the Tribunal is whether it is just and convenient to make an order appointing a Manager under section 24 of the 1987 Act.
73. The Tribunal considers the property to be a complex building which has been extended and converted to residential accommodation since its construction as an hotel in the 1930's. As far back as 1988 severe cracks appeared in the external structure which were investigated by structural engineers who made various recommendations. In 2013 Peter Holliday and Associates identified high priority works (action now) for the external structure, some of which remain to be carried out. There have been subsequent reports of structural engineers and building surveyors emphasising the urgency of works to the roof, steel frame, and the concrete and external render. The planned maintenance schedule prepared for the Board in 2017 recommended a spend of about £840K over 10 years (2018 -2028) to bring the building back into repair.
74. The challenges posed by the current disrepair of the building are magnified by the high service charge arrears compounded by the problems posed by serial non-payers and genuine cases of hardship, and by the factional conflict and mistrust that exists within the leaseholder community.
75. The Tribunal finds that the current Board at the moment is ill-equipped to deal with the immense challenges that presently prevail at Northumberland Court. The Tribunal is satisfied that it is

just and convenient to appoint a Manager who is independent of the parties to manage the property. The Tribunal sees no advantage in having the appointment an interim one and has decided to make a full Order.

76. The Applicants have requested an Order for five years which effectively would disenfranchise the leaseholders through their Board in having a say on their building. The Tribunal reminds itself that the appointment of manager is a remedy of last resort and not intended to be a permanent arrangement. The Tribunal considers highly relevant that this building is owned by the leaseholders, and that all leaseholders from whatever faction are fully committed to making this building a safe place for the residents. Normally such commitment is a unifying force but in this case it has turned out to be highly destructive and confrontational.
77. The Tribunal considers that the appropriate period of the Order should be two years with the facility to extend by application if need be. The ultimate goal of the Order is to put the building on the right path so as to enable the Board to resume its management role in respect of the building. In this regard the Tribunal considers the priorities for the Manager are the planned maintenance programme and the collection of service charges. The Board should retain control of the ground rents and the income from various sources. The Board will also have the ultimate say on whether forfeiture proceedings should be embarked for non-payment of service charges, which should give some protection to genuine hardship cases. The Board should use this interregnum to develop its competence as managers of the property and learn from the independent manager. Mr Porter on his own admission is too ill and too old to carry on much longer and he needs to bring on his successors from a younger generation. The Board should also use this space to embed its ideas for income generation which will be for the benefit of all, and with the freeholders to explore if there are any viable projects to develop the site.
78. Success will look like in two years' time: the planned maintenance programme has been implemented and urgent matters dealt with; service charges are being collected and the arrears are at minimum; and the Board is delighted with the work of the Manager that it takes him on as the managing agent albeit at a slightly lower fee.
79. The reality is that because the appointment of a Manager is a remedy of last resort, appointments also fail because the parties maintain their respective positions and continue the conflict. In order for the appointment to work, the Applicants are required to step back and let the Manager use his professional judgment to deal with the property. The Tribunal notes that parts of the proposed Management Order are too prescriptive and does not give the

Manager the necessary freedom. Likewise the Board should offer support to the Manager, particularly in relation to the collection of service charge arrears. The Tribunal accepts that there are cases of genuine hardship but the Tribunal would be surprised that all non-payers fell into that category.

80. The major stumbling block moving forward is the dispute with Bamptons, the managing agent. The Tribunal has no intention and no jurisdiction to enter the fray of the rights and wrongs of this dispute. Mr Barker will be aware that the Tribunal will direct him in the capacity of managing agent as well as the Board to conduct a formal handover of all documents, accounts and so forth relating to the management of Northumberland Court to the appointed Manager. This, however, will not resolve the current dispute between the Board and Bamptons. The Tribunal considers there is a way to bring this dispute to a swift end before the Manager takes up his appointment but it would require some-one probably Bamptons to take the first step.
81. Mr Coad for the freeholder attended the hearing in support of the Residents' Company. The Tribunal observed that Mr Coad asked many questions. The Tribunal urges the freeholder to give support to the appointment in order to bring stability to Northumberland Court.
82. The final decision for the Tribunal is whether Mr Blooman should be appointed as the Manager. Mr Blooman has over 30 years experience in both residential property management and building surveying. Mr Blooman is qualified as a building surveyor and a Member of the Royal Institution of Chartered Surveyors. Mr Blooman has been appointed Manager under section 24 on two prior occasions. The appointment for Kilmeny House, Wimbledon (7 units) was terminated with Mr Blooman's agreement after one year. Mr Blooman's other appointment related to a property of six units in Plender Street NW London in which he established a successful regime for the collection of service charges. Mr Blooman supplied details of other properties managed at [161] and a selection of construction projects in respect of residential properties for which he was responsible [162]. The total net value of the contracts was £21.5 million with the value of five projects ranging from £240K to £1.3 million. Mr Blooman has visited Northumberland Court and is fully aware of the current issues. Mr Blooman set out his proposals for managing the property in a Management Plan [152-160].
83. Mr Blooman acknowledged that he was based in North West London, but did not see that as an impediment to his role as Manager of the property if appointed. Mr Blooman pointed out that he visited Kent on a regular basis and that it took him one hour

and 40 minutes from his office to Margate. Mr Blooman explained that he would attend as often as necessary to ensure that the objectives of the appointment which was personal to him were met. Mr Blooman said that he would arrange for various contractors to deal with emergencies at the property, which he said was the usual arrangement even with managing agents based locally.

84. Mr Blooman explained that his basic fee of £20,000 per annum plus VAT was higher than the rate charged by managing agents because of the circumstances and nature of the appointment. Mr Blooman stated that Managers are only appointed when there are serious problems with the management of the building and that as Manager he would have far greater responsibilities than a managing agent.
85. Mr Blooman accepted that he had not previously managed a building of the size of Northumberland Court. Mr Blooman, however, believed that he had comparable experience of managing properties albeit smaller with had similar problems to the subject property. Mr Blooman cited the example of the Mill Hill Building North West London comprising 15 units which he said was in a desperate condition when he took over but he managed to put the building in good order at the end of two years.
86. The Residents' Company and the Freeholder expressed concern that Mr Barker of Bamptons had given the Applicants the name of Mr Blooman as a potential Manager for the property. Mr Blooman stated that he had no association with Bamptons, and in fact had appeared on an opposing side in proceedings where Bamptons were instructed by the other party.
87. The Resident's Company did not put forward an alternative proposal for Manager. The Residents' Company said that if the Tribunal did not make an appointment it would engage Propmanco, a local managing agent of repute. The Tribunal suggested that a representative from Propmanco might wish to attend the hearing. Unfortunately Mr Dahms of Propmanco said he was unable to attend because of prior engagements and sent a letter instead.
88. The Tribunal is satisfied that Mr Blooman is suitable to be appointed as Manager. The Tribunal considers his combined experience and expertise as residential property manager and building surveyor lends itself to the challenges faced by a Manager of this property. Further the Tribunal finds that Mr Blooman's prior experience as an appointed Manager will be an asset, and that he will not be coming to this position without any awareness of the responsibility it entails. Finally the Tribunal was impressed with his knowledge of the property and his plans to address the issues.

89. The Tribunal considered the fact that Mr Blooman had not previously managed a property of the size of Northumberland Court had to be weighed against his considerable experience as a residential property manager. The Tribunal noted the Residents' Company's concerns about Bamptons giving his name to the Applicants. The Tribunal, however, was satisfied by his assurance that he had no association with Bamptons. The Order will require Mr Blooman to act impartially to all parties. The Tribunal considers that Mr Blooman's proposed fee schedule was in line with the normal rate of charges for Tribunal appointed Managers.
90. The Tribunal did not consider Mr Dahms of Propmanco for potential appointment as he was unable to attend the hearing. The Tribunal, however, would in all probability have not considered Mr Dahms because it would appear that Propmanco was not regulated by or accredited to a recognised professional body for surveyors and property managers.
91. The Tribunal's role with an appointed Manager is that it sets the framework in which the Manager should operate and the Manager can seek the directions of the Tribunal. The Tribunal would, however, not get involved in day to day management issues and has to maintain a distance from the Manager in case it has to determine disputes between leaseholders and the Manager.

### **The Tribunal's Decision**

92. In accordance with section 24(1) Landlord and Tenant Act 1987, Mr Mark Blooman MRICS of B2 Chartered Surveyors of 9/27 The Broadway, London N8 8DR is appointed as Manager of the Property known as Northumberland Court, Northumberland Avenue, Margate CT9 3BS (the Property).
93. The Order shall continue for a period of two years from 16 September 2019. If any party or parties interested wish to apply for an extension of the Order they are encouraged to do so at least three months before the Order expires.
94. The Manager shall manage the Property in accordance with
- a) the directions and schedule of functions and services attached to this Order;
  - b) save where modified by this Order, the respective obligations of the Landlord and the Lease whereby the Property is demised by the Landlord and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
  - c) the duties of a Manager set out in the Service Charge Residential Management Code ("the Code") (3<sup>rd</sup> Edition) or such other replacement code published by the Royal Institution of

Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development act 1993.

95. The Manager shall register the Order against the Landlord's registered title as a restriction under the Land Registration Act 2002 or any subsequent Act.

### **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.







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

<b>Case reference</b>	:	CHI/29UN/LAM/2019/0008
<b>Property</b>	:	Northumberland Court, Northumberland Avenue, Margate, Kent, CT9 3BS
<b>Applicant</b>	:	Miss Grace Neal of Flat 33 and 11 other leaseholders as specified in the Application form
<b>Representative</b>	:	Mr Julian Smith & Miss Grace Neal
<b>Respondent</b>	:	Northumberland Court Residents (Cliftonville) Limited
<b>Representative</b>	:	Mr Phillip Porter (Director)
<b>Respondent Two</b>	:	Northumberland Court (2008) Ltd
<b>Representative</b>	:	Mr John Coad (Director)
<b>Type of application</b>	:	Appointment of Manager Section 24 of the Landlord and Tenant Act 1987 (1987 Act)
<b>Tribunal member(s)</b>	:	Judge Tildesley OBE Mr R Athow FRICS Mr P A Gammon MBE
<b>Venue</b>	:	Margate Law Courts, The Court House, Cecil Square, Margate, Kent CT9 1RL 7 August 2019
<b>Date of decision</b>	:	27 August 2019

---

**MANAGEMENT ORDER FINAL**

---

## **INTERPRETATION**

### **IN THIS ORDER**

**“The Property”** means the flats and other premises known as Northumberland court, Northumberland Avenue, Margate; CT9 3BS as registered at the Land Registry under the Respondents’ leasehold and freehold titles numbered K35399 and K21230 and shall include the buildings, garages; outhouses, gardens, amenity space, drives pathways roads, parking spaces landscaped areas, flower beds passages, bin-stores, common parts, storage rooms basements, electricity and power rooms; lift machine rooms and all other parts of the property

**“The Landlord”** shall mean Northumberland Court Residents (Cliftonville) Limited the First Respondent to this Application, or their successors in title to the reversion immediately expectant upon the Leases.

**“The Freeholder”** shall mean Northumberland Court (2008) Ltd

**“The Tenants”** shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and "Tenant" shall be construed accordingly.

**“The Leases”** shall mean all leases and/or underleases of flats in the Property as varied by the FTT under case reference CHI/29UN/LVL/2013/001 and "Lease" shall be construed accordingly.

**“The Manager”** means Mr Mark Blooman MRICS of B2 Building Surveyors Limited, 9/27 The Broadway, London N8 8DR.

**“The Functions”** means any functions in connection with the management of the Property including any obligations and powers of the landlord under the Leases.

### **It IS ORDERED that**

2. In accordance with section 24(1) Landlord and Tenant Act 1987, Mr Mark Blooman MRICS of B2 Building Surveyors Limited, 9/27 The Broadway, London N8 8DR is appointed as Manager of the Property.
3. The Order shall continue for a period of two years from 16 September 2019. If any party or parties interested wish to apply for an extension of the Order they are encouraged to do so at least three months before the Order expires.
4. The Manager shall manage the Property in accordance with
  - a) the directions and schedule of functions and services attached to this Order;
  - b) save where modified by this Order, the respective obligations of the Landlord and the Lease whereby the Property is demised by

- the Landlord and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
- c) the duties of a Manager set out in the Service Charge Residential Management Code (“the Code”) (3<sup>rd</sup> Edition) or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development act 1993.
  - d) The provisions of sections 18 to 30 of the Landlord and Tenant Act 1985
5. The Manager shall register the Order against the Landlord’s registered title as a restriction under the Land Registration Act 2002 or any subsequent Act.

### **DIRECTIONS**

6. From the date this Order comes into effect, no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.
7. Where there is a conflict between the provisions of the Management Order and the lease, the provisions of the Management Order take precedence.
8. That the Landlord shall give all reasonable assistance and co-operation to the Manager in pursuance of his functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of their said rights, duties or powers by due process of law. For the avoidance of doubt this shall not prevent the Landlord from bringing legal proceedings (or any other due process of law) should the Manager act unlawfully and/or negligently and/or contrary to the powers and duties set out in this Order.
9. That the Landlord and the Freeholder allows the Manager and his employees and agents access to all parts of the Property in order that the Manager might conveniently perform his functions and duties and exercise his powers under this Management Order.
10. The Manager shall act fairly and impartially in his dealings in respect of the Property.
11. The Manager shall in the performance of his 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.
12. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £2 million and shall provide copies of the

certificate of liability insurance to the Tribunal prior to the 16 September 2019 and upon request being made by any Tenant of all or part of the Property, and the Landlord. The Certificate should specifically state that it applies to Mr Blooman's duties as a Tribunal appointed Manager.

13. That no later than two weeks after the date of this Order the Landlord and Bamptons shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Landlord and Bamptons shall transfer to the Manager all the accounts, books, records and funds relating to the Service Charge and Insurance of the Property.
14. The rights and liabilities of the Landlord arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon the date of the appointment become rights and liabilities of the Manager subject to the right of the Manager to decide in his absolute discretion which of any contracts he will assume the rights and liabilities such decision shall be communicated in writing to the relevant parties within 56 days from the date this order.
15. The Manager shall be entitled to remuneration, which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the property in accordance with the Schedule of Functions and Services attached.
16. By no later than six months from the date of appointment the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the Property up to that date providing a copy to the Tenants of the Property and the Landlord and the Freeholder at the same time.
17. Within 56 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 reports and accounts on the Landlord, Freeholder and Tenants 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 any new Tribunal appointed manager or, in the case of dispute, as decided by the Tribunal upon application by any interested party.
18. The Manager may apply to the First-Tier Tribunal for further directions, in accordance with section 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 him to discharge his obligations under this Order and/or to pay his remuneration.

## **SCHEDULE OF FUNCTIONS AND SERVICES**

### **Insurance**

1. Maintain appropriate building insurance for the Property.
2. Ensure that the Manager's interest is noted on the insurance policy

### **Service charge**

3. Prepare an annual service charge budget, and make provision for interim payment in advance, and a balancing payment by, or credit made to, the Tenants at the end of the year as appropriate.
4. Administer the service charge and prepare and distribute appropriate service charge accounts to the Tenants.
5. Demand and collect service charges and Insurance due from the Tenants under the leases.
6. The Manager shall have the authority to demand payments in advance and balancing payments at the end of the accounting year, to establish a sinking fund to meet the Landlord's obligations under the lease, to allocate credits of service charge due to Tenants at the end of the accounting year to the sinking fund, and to collect arrears of service charge and insurance that have accrued before his appointment which includes the interim service charge for the year ended 30 June 2019.
7. The Manager will finalise his first estimate of the service charge for the year from 1 July 2019 to 30 June 2020 (accounting year) within seven days of the date of the Management order, and send it with the demand for payment on account. Thereafter for subsequent accounting years the estimated budget and demand will be issued 30 days prior to the commencement of the relevant accounting year.
8. The interim service charge shall be payable in advance by two equal instalments on 29 September and 25 March in each accounting year. The first instalment for the year 2019/2020 shall be payable on 29 September 2019.
9. The contributions payable by the Tenants to the service charge are set out in the FTT decision reference number CHI/29UN/LVL/2013/0010.
10. The Manager is entitled to recover through the service charge the cost of any surveyors, architects, solicitors, counsels and other professional persons or firms fees incurred by him whilst carrying out his functions under the Order.
11. Place, supervise and administer contracts and check demands for payments of goods services and equipment supplied for the benefit of the Property with the service charge budget.

### **Administration Charges**

12. The Manager may recover administration charges from individual Tenants for his costs incurred in collecting service charges and insurance which includes the costs of reminder letters, transfer of files to solicitors and letters before action. The

Manager should publish the costs of his charges for debt recovery and the timetable allowed for each course of action. Such charges will be subject to legal requirements as set out in schedule 11 of the Commonhold and Leasehold Reform Act 2002.

### **Accounts**

13. Prepare and submit to the Landlord and the leaseholders an annual statement of account detailing all monies receivable, received and expended. The accounts to be certified by the external auditor. If required by the Manager.
14. Maintain efficient records and books of account, which are open to inspection by the Landlord and the Tenants. Upon request, produce for inspection, receipts or other evidence of expenditure.
15. Maintain on trust an interest bearing account at such bank or building society, as the Manager shall from time to time decide, into which ground rent, service charge contributions, Insurance Rent and all other monies arising under the leases shall be paid.
16. All monies collected will be accounted for in accordance with the Code 3<sup>rd</sup> edition.

### **Repair and Maintenance**

17. Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property which includes compliance with all regulatory and statutory requirements and in the interests of good estate management.
18. The setting up and implementation of a planned maintenance programme to allow for the periodic redecoration and repair of the property.
19. In addition to undertaking and arranging day-to-day maintenance and repairs, to arrange and supervise major works which are required to be carried out to the Property including preparing a specification of works and obtaining competitive tenders.
20. To liaise with the relevant statutory bodies responsible for buildings.
21. To ensure that the Landlord, Freeholder and the Tenants are consulted on any proposed works to the Property and to give proper regard to their views. Copies of programmes of planned and major works should be sent to the Landlord, freeholder and Tenants.

### **Right to Bring Legal Proceedings**

22. The Manager shall be entitled to bring proceedings in any court or tribunal in respect of any causes of action (whether contractual or tortious) accruing before or after the date of his appointment.
23. Such entitlement shall include but shall not be limited to bringing proceedings in respect of any arrears of service charge attributable to any of the Flats in the property and for which these proceedings shall

include any application under Part 7 or Part 8 of the Civil Procedure Rules for judgment in the County Court or High Court including a charging Order or any application made to the First-tier Tribunal under section 27A of the Landlord and Tenant Act 1985 or section 168(4) and schedule 11 of the Commonhold and Leasehold Reform Act 2002 and shall further include any appeal against any decision made in any such proceedings.

24. The Manager shall be entitled to be reimbursed from the service charge account any costs, disbursements or VAT for taking proceedings including any fees payable to solicitors, accountant, counsel or expert on a full indemnity basis. If any of those costs are recovered direct from the defaulting Tenant or Landlord those costs should be refunded to the service charge account.
25. The Manager has the right to instruct solicitors and counsel and other professionals for the taking of legal proceedings.

### **Fees**

26. The Manager's fee for the above-mentioned management services will be a basic fee of £20,000 per annum. The basic fee will include those services for the Annual Fee at paragraph 3.4 of the Code
27. Fees for additional services will be in accordance with the fees set out in the Draft Management Order at [513]. The Manager will provide an appendix setting out these additional fees to be affixed to the order within 14 days.
28. VAT to be payable on all the fees quoted above where appropriate at the rate prevailing on the date of invoicing.

### **Complaints procedure**

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