



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

**Case reference** : **LON/00AZ/LVM/2015/0022**

**Property** : **113-117 Kirkdale, London SE26 4QJ**

**Applicant** : **Mr Andrew McKeer MRICS (tribunal-appointed manager)**

**Respondents** : **(1) Mr Nasim Azam (former leaseholder of flat 3);  
(2) Mr Mark Tejada of HML Andertons Limited (former tribunal-appointed manager);  
(3) Mr Uthayakanthan (freeholder);  
(4) The current leaseholders of 113-117 Kirkdale.**

**Type of application** : **Application by a tribunal-appointed manager for directions**

**Tribunal members** : **Judge Timothy Powell  
Mrs H C Bowers MRICS**

**Date and venue of hearing** : **22 August 2019 at  
10 Alfred Place, London WC1E 7LR**

**Date of this Interim Decision** : **27 August 2019**

---

**FINAL DECISION**

*and temporary appointment of a replacement manager*

---

**The tribunal's orders and directions**

These orders and directions are made in respect of the appointment of Mr McKeer as manager of 113-117 Kirkdale, London SE26 4QJ ("the Building"), which appointment expires on 31 August 2019:

- (1) Upon the expiry of Mr McKeer's appointment, the £21,994.97 reserve fund monies that he received on 17 May 2016 from the former manager,

Mr Tejada of HML Andertons, shall be paid back to the lessees for the time being of the following contributing flats, as follows:

To 113, Flat 3 (Mr Lee)	52.94%	£11,644.14
To 113, Flat 4 (Ms Sellick)	47.06%	£10,350.83
		<hr/>
		£21,994.97

- (2) The sums in paragraph (1) are to be paid in the following way:
- On or before 13.9.2019:

To 113, Flat 3 (Mr Lee)	£6,124.00
To 113, Flat 4 (Ms Sellick)	£5,443.82
	<hr/>
	£11,567.82
  - On or before 13.12.2019, the balance, subject to any application by the manager for further directions that may be necessary if full recovery of outstanding service charges from other lessees has not been achieved.
- (3) In addition, on or before 13.9.2019, Mr McKeer shall make a refund of over-paid service charges to Mr and Mrs Phillips (117, Flat 2) in the sum of £2,284.54;
- (4) Upon receipt of this Final Decision from the tribunal, Mr McKeer shall re-issue invoices to lessees for the three years of his appointment, namely for the periods ending 24 March 2017, 2018 and 2019, and including the final charges for the period up to and including 31 August 2019, giving due credit to Mr and Mrs Phillips for the payment they have already made. Copies of those revised invoices shall be filed with the tribunal;
- (5) The first tribunal-appointed manager, Mr Tejada of HML Andertons, is directed to pay to Mr McKeer, on or before 13.9.2019, the sum of £313 (and any accrued interest) still held in their Barclays Bank plc account "Kirkdale SC", account number 83795292, sort code 20-37-47; and Mr McKeer shall pass it on to Mr Rolfe as unspent service charges for the benefit of lessees in their appropriate shares;
- (6) Mr McKeer shall serve lessees and file with the tribunal final accounts by 14.2.2020, including individual statements for each lessee, subject to any application by the manager for further directions that may be necessary;
- (7) The tribunal appoints Mr Ashley Rolfe of 51 The Mall, Ealing, London W5 3TA as temporary manager of 113-117 Kirkdale for a period of 3 months from 1 September 2019, to expire at midnight on 30 November 2019, or as may be determined upon further order of this tribunal. The appointment of Mr Rolfe will be on the same terms and conditions as the existing order. The purpose of this order is to preserve the lessees' position and to give Mr Rolfe time to prepare a management plan and attend the tribunal at a hearing in October 2019. Mr Rolfe, the lessees

and the freeholder, Mr Uthayakanthan, shall by 13.9.2019 provide the tribunal with their dates to avoid in October 2019 (unless an agreement is reached between lessees and the freeholder that the tribunal-appointment should expire and that Mr Rolfe is appointed by the freeholder to be his manager of the Building, in which eventuality the tribunal should be notified);

- (8) Mr McKeer shall by 31.8.2019 provide to Mr Rolfe and to the freeholder details of the current lessees and, subject to each lessee paying their revised invoices, confirmation that each lessee will have a zero balance on their service charge account from 1.9.2019;
- (9) The manager may apply for further directions in relation to any aspect of this order.

### **Background**

1. The background to this case is set out in the tribunal's Interim Decision dated 9 August 2019.
2. The applicant is Mr Andrew McKeer, the tribunal-appointed manager of 113-117 Kirkdale, London SE26 4QJ ("the Building") whose appointment is due to expire on 31 August 2019.
3. A final hearing was arranged for 22 August 2019, for which Mr McKeer produced financial and other documents, to enable the tribunal to give him directions to wind-up his period of appointment.

### **The hearing on 22 August 2019**

4. The final hearing took place on 22 August 2019. Mr Sennett, one of the original tribunal members involved in making the Interim Decision, was unavailable on this date, so Mrs Bowers, the London Deputy Regional Valuer, was appointed in his place to deal with end-of-appointment issues.
5. The hearing was attended by Mr McKeer, Mr Lee (113, Flat 3), Mr Markou (husband of the lessee of 113, Flat 1) and Mr Azam (former lessee of 113, Flat 3). There was no appearance by other lessees or by the freeholder, Mr Uthayakanthan, although all had been notified of the hearing date.
6. There was also no attendance by any proposed alternative manager, although Mr Markou handed in to the tribunal a short proposal by a past nominee, Mr Ashley Rolfe, expressing an ability and a willingness to be appointed manager. It was said that, notwithstanding earlier opposition, all six of the lessees in the Building supported the appointment of Mr Rolfe, in place of Mr McKeer. This position was supported by Mr Lee, who along with other lessees had originally opposed the appointment of Mr Rolfe.

7. Mr McKeer had produced a lever arch file of financial documents for use at the hearing, in accordance with the tribunal's directions.

**Facts, determinations and reasons**

8. Mr McKeer's appointment as manager began on 29 February 2016 and will expire on 31 August 2019.
9. On 17 May 2016, the previous manager, Mr Tejada of HML Andertons transferred to Mr McKeer some £21,994.97 reserve fund monies held on behalf of lessees of the Building.
10. As at 21 August 2019, Mr McKeer held £13,872.36 cash in the bank, on trust for lessees. That sum included a recent payment of £4,810.16 made by Mr and Mrs Phillips (117, Flat 2), in response to invoices that Mr McKeer issued to lessees on 4 July 2019 (see below).
11. Those invoices included costs incurred by HML Andertons, which had been allocated to the years ending 24 March 2014, 2015 and 2016, and costs incurred by Mr McKeer for the years ending 24 March 2017, 2018 and 2019.
12. HML Andertons had not issued demands since 2013, but the sums in question had already been deducted by them from the service charge monies that they held, before the transfer to Mr McKeer. It was agreed that it was not appropriate to re-charge those costs to lessees, when they had already been paid, and that they could therefore be ignored.
13. In order to draw a line under the past, it was further agreed that the tribunal should only consider those expenses actually incurred by Mr McKeer during the period of his appointment; and give directions to him as to the refund of monies to leaseholders after expiry of that period. This had the advantage of balancing the books so far as Mr McKeer was concerned; and it would allow for the situation where, on 1 September 2019, the freeholder or any new manager started with zero balances for each of the lessees in the Building. This is a practical approach based on the information available and the wishes of the parties aired at the hearing.
14. It was agreed that during his appointment the costs incurred by Mr McKeer for the years ending 24 March 2017, 2018 and 2019, together with the closing costs to expiry of the management order were £13,097.67, calculated as follows:

<b>Date</b>	<b>Expense</b>	<b>£</b>
2017	Repairs	1807
	Management fee	1848
2018	Repairs	3695
	Management fee	1848
2019	Repairs	266

	Management fee	1900
2020	Accountant & electrical	942
	Management fee	475
	Management fee to 31.8.19	316.67
	<b>TOTAL</b>	<b>13,097.67</b>

#### Notes

- (i) The charge appearing in the accounts for a £200 tribunal fee has been ignored, as this was refunded by the tribunal.
- (ii) The tribunal has also ignored the cost of buildings insurance, as this was paid by the freeholder and had not been re-charged to lessees, despite the original management order giving responsibility for insuring to Mr McKeer, and despite requests by him and for an apportionment between the residential and commercial parts of the building.
15. Mr and Mrs Phillips had already paid the 4 July 2019 invoice in full, i.e. £4,810.16. This comprised HML Andertons costs of £2,284.54 and Mr McKeer's costs of £2,525.62. It was agreed that as part of the winding-up arrangements, Mr McKeer should refund them the money they had paid in respect of the HML Andertons costs. It also meant that of the £13,097.67 costs incurred by Mr McKeer, he had already recovered £2,525.62.
16. It was further agreed that Mr McKeer would issue fresh invoices to lessees, deleting the HML Andertons costs and limiting himself to his own costs. If lessees paid those fresh invoices, the cash at bank would thereby increase to £22,159.87, calculated as follows:

	<b>Date</b>	<b>Item</b>	<b>£</b>	<b>£</b>
	21.8.19	Cash at bank	13,872.36	
		Manager's costs, if recovered	13,097.67	
				26,970.03
Less		Refund to Mr & Mrs Phillips	-2,284.54	
		Paid by Mr & Mrs Phillips	-2,525.62	
				-4,810.16
		<b>TOTAL</b>		<b>22,159.87</b>

17. That would then enable Mr McKeer to refund the reserve fund monies (not spent on reserve fund items) to the lessees for the time being of the contributing flats, Mr Lee (113, Flat 3) and Ms Sellick (113, Flat 4); the respective contributions having been £12,230.36 and £10,871.43. The refunds would be in proportion to their payments, 52.94% and 47.06%

of their combined payments. A refund of the £21,994.97 received from HML Andertons, would then leave the sum of £164.90 (£22,159.87, minus £21,994.97), for distribution to lessees, or transfer to the freeholder or to a new manager.

18. In addition, it appeared from the accounts and from a bank statement identified by Mr Azam, that HML Andertons still hold £313 of lessees' money in a Barclays Bank service charge account, named "Kirkdale SC", account number 83795292, sort code 20-37-47. Mr McKeer invited the tribunal to direct Mr Tejada/ HML Andertons to transfer this sum (and any accrued interest) to him, to add to the funds available.
19. All parties appeared happy with these practical arrangements, and two of the lessees, Mr Lee and Mr Markou (on behalf of his wife), indicated that they would pay the revised invoices, when received. Nonetheless, it was recognised that other lessees may either not pay the revised invoices, or raise disputes about Mr McKeer's costs, in which case he indicated he would take necessary legal action for recovery; and the tribunal agreed to include provision in its order for Mr McKeer to be able to apply to the tribunal for further directions, if this impacted on his ability to comply with the order.
20. Mr Azam did question the other arrears owed by lessees, arising from the period of management by Mr Tejada/ HML Andertons. He said that Mr McKeer should have acted to recover these. He feared that the arrangements now being discussed overlooked those arrears and that he and Ms Sellick, who always paid their service charges in full, were subsidising the other lessees, who did not do so. He estimated that both he and Ms Sellick would be out of pocket to the tune of about £1,000 each.
21. Mr McKeer explained that he had not acted to recover arrears because when he received the transfer of monies from HML Andertons, there was little or no information about lessees' balances and HML Andertons refused to meet with him.
22. With the parties, the tribunal carried out a brief analysis of the running accounts for each of the lessees dated 25 April 2016 and provided to Mr McKeer by HML Andertons (at Tab 4 of the bundle produced for the hearing). Once the reserve fund contributions were deleted, these not having been paid by the other lessees, the balances on the accounts showed only one lessee was in debit, Mr Philippou in 113, Flat 2, and then only by less than £500; all the others being in credit.
23. In this application, the tribunal was limited to facilitating an account of the costs incurred by the current manager and giving directions for the termination of his appointment and for the refund of monies held by him at expiry. The tribunal was not seized of an application to challenge the reasonableness or payability of costs incurred by the first manager, HML Andertons, which were now up to seven years old. If lessees have concerns about those costs, they are still able to make an application to

the tribunal under section 27A of the Landlord and Tenant Act 1985, naming HML Andertons as respondent. However, before doing so, the tribunal would urge them to consider the time and effort that would be involved, and the cost-effectiveness of any outcome.

24. Taking into account the proposed refund to Mr & Mrs Phillips, the available cash at bank in Mr McKeer's hands on 31 August 2019 will be £11,567.82 (£13,872.36, minus £2,284.54). It was agreed that Mr McKeer would pay that to the lessees for the time being of Flats 3 and 4, by 13 September 2019. He would issue fresh invoices to lessees for his costs during his appointment and, on the assumption that each lessee paid their invoice, he would pay the balance of the reserve fund monies in respect of Flats 3 and 4, by 13 December 2019, subject to any application by the manager for further directions that may be necessary, if full recovery of outstanding service charges from other lessees has not been achieved.
25. In addition, on or before 13 September 2019, Mr McKeer also agreed to make a refund of over-paid service charges to Mr and Mrs Phillips in 117, Flat 2, in the sum of £2,284.54
26. As indicated, fresh invoices would be issued to lessees upon receipt of this decision, covering only the years to 24 March 2017, 2018 and 2019, and the final costs of Mr McKeer's period of appointment, giving credit to Mr & Mrs Phillips for the sums they have already paid.
27. To bring Mr McKeer's appointment to an orderly end, he agreed to produce final accounts and individual statements for lessees, within six months, i.e. by 14 February 2020, subject again to his ability to apply for directions if necessary.
28. Long before this, by the expiry of this appointment, he agreed to supply details of current lessees to the freeholder or, as the case may be, to a new manager and, when lessees have paid their revised invoices, confirm that there will be zero balances on each of their accounts. There are no current contracts and no outstanding invoices, apart from those mentioned above, and taken into account.

### **Temporary appointment of a new manager**

29. Finally, at the request of lessees present, the tribunal agreed to appoint Mr Ashley Rolfe of 51 The Mall, Ealing, London W5 3TA as temporary manager of 113-117 Kirkdale for a period of 3 months from 1 September 2019, to expire at midnight on 30 November 2019, or as may be determined upon further order of this tribunal. The appointment of Mr Rolfe will be on the same terms and conditions as the existing order.
30. The purpose of this order is to preserve the lessees' position and to give Mr Rolfe time to prepare a management plan and attend the tribunal at a hearing in October 2019. To this end, Mr Rolfe, the lessees and the freeholder, Mr Uthayakanthan, must, by 13 September 2019, provide the tribunal with their dates to avoid in October 2019. However, if an

agreement is reached between lessees and the freeholder that the tribunal-appointment should expire and that Mr Rolfe is appointed by the freeholder to be his manager of the Building, the tribunal should be notified of this.

31. As this temporary order has been made by the tribunal at the hearing, without prior notice, the parties and/or the current or future manager may apply for further directions as to the continuation, variation or discharge of the temporary order and/or as to the making of any final order.

**Name:** Timothy Powell

**Date:** 27 August 2019

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).