FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**CAM/22UD/LAM/2019/0011**
HMCTS code (audio, video, paper)	:	**A:BTMMREMOTE**
Property	:	**Blocks 1-3, Lions Row, Avenue Road, Brentwood, Essex CM14 5EQ**
Applicants	:	**Leaseholders of Flats 1-9**
Representative	:	**Paul Meekcoms (Flat 7)**
Respondent	:	**Gateway Property Holdings Limited**
Representative	:	**Gateway Property Management Limited**
Type of application	:	**Appointment of a manager**
Tribunal members	:	**Judge David Wyatt** **Judge Wayte**
Date of decision	:	**14 August 2020**

DECISION

<u>Covid-19 pandemic: description of hearing</u>

This has been a remote audio hearing. The form of remote hearing was A:BTMMREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents we were referred to are in a bundle of 315 pages, together with the further documents and written submissions provided after the hearing and described in paragraph 7 below, the contents of which we have noted.

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Decisions of the tribunal

(1) The application is dismissed.

(2) The tribunal makes the findings set out under the various headings in this decision.

(3) The tribunal orders under section 20C of the Landlord and Tenant Act 1985 (the "**1985 Act**") that any costs incurred by the Respondent in connection with these proceedings in this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Application

1. The Applicant leaseholders of Flats 1-9 at the Property (whose details are set out in the Schedule to this decision) applied to the tribunal seeking an order appointing Abby Brealey of Metta Property Management Limited as a manager of the Property under section 24 of the Landlord and Tenant Act 1987 (the "**1987 Act**"). The Applicants also applied for an order under section 20C of the 1985 Act.

2. The Applicants said that the Property was poorly managed and the relationship with the Respondent landlord was strained. The Applicants sought the order on the grounds set out in their preliminary notice, which centred on allegations of: (i) breach of obligations in relation to a reserve fund; and (ii) unreasonable service charges.

3. The Applicants relied in part on decisions of a tribunal in this jurisdiction, copies of which were provided in the bundle, in case numbers:

    a) CAM/22UD/LSC/2017/006 (the "**2017 Decision**"); and

    b) CAM/22UD/LSC/2018/0051 (the "**2018 Decision**").

4. The application was opposed by the Respondent landlord, Gateway Property Holdings Limited.

Hearing

5. At the hearing on 14 July 2020, Mr Meekcoms represented the Applicants and gave evidence for them. The proposed manager, Ms Brealey, attended as explained below. The Respondent was represented by Mrs Coleman (in-house solicitor). The current manager responsible for the Property, Mr Blewer, also gave evidence for the Respondent.

6. Mr Roberts (Flat 4) and Mr Seaman (Flat 8) had given witness statements for the Applicants, but did not attend the hearing. Mrs Coleman said that the Respondent did not take issue with those witnesses not being available for cross examination, because the disputed parts of their statements related to the condition of the Property and allegations about maintenance, which were not relevant to the issues in this application.

7. As permitted by the tribunal and agreed with the parties at the hearing, shortly after the hearing Mrs Coleman sent copies of the accounts for 1 April to 30 September 2014 and 1 October 2014 to 30 September 2015, and on 15 July 2020 Mr Meekcoms made written submissions about those accounts on the issue of the reserve fund (as examined below). The Respondent then sent answering written submissions on 16 July 2020 and wrote again on 23 July 2020 to seek to provide further information in response to a new question from the Applicants about the breakdown of receivable service charge figures in these accounts.

8. At the hearing, Mr Meekcoms said that all leaseholders of the Property now supported the application to appoint a manager; the leaseholders of Flats 10 and 11 had agreed to the application. He confirmed that he had seen a signed consent from them, obtained by one of the other leaseholders.

Property

9. The parties confirmed they were content to rely on the descriptions given in the 2017 Decision of the layout and nature of the blocks at Lions Row. At the hearing, Mr Meekcoms referred to the site plan at page 189 of the bundle, explaining that Flats 1-4 are in Block 1, Flats 5-7 are in Block 2 and Flats 8-11 are in Block 3. He said that the Property includes parking accommodation, cycle bays and a lawn with trees which are all maintained by the Respondent.

10. Mrs Coleman referred to the schedule of leases noted in the Land Registry entries for the freehold title to the Property, which indicates that the leases of the (seven) ground and first floor flats were completed in 2009 or 2010 and the (four) upper floor flats were completed in 2013 or 2014.

11. The Property was developed by Parkland Developments, who (it appears) engaged "*Gateway*" as managing agent at an early stage but then replaced them with Red Rock Property Management.

12. On 1 April 2014, the Respondent, Gateway Property Holdings Limited, purchased the freehold title from the developer. It appointed Gateway Property Management Limited, a member of the same group of companies, as managing agent in place of Red Rock.

Issues

13. In the case management directions of 12 March 2020, the following issues were identified for determination. Each of these is examined in turn below.

- Did the Applicants' preliminary notice comply with section 22 (and if not, should the tribunal still make an order in exercise of its powers under section 24(7)) of the 1987 Act?
- Have the Applicants satisfied the tribunal of any grounds for making an order as specified in section 24(2) of the 1987 Act?
- Would the proposed manager be a suitable appointee and, if so, on what terms and for how long should the appointment be made?
- Is it just and convenient to make a management order?
- Should the tribunal make an order under section 20C of the 1985 Act, to limit the Respondents' costs that may be recoverable through the service charge?

Preliminary notice

14. Before an application is made for a management order under section 24, section 22 of the 1987 Act requires the service of a preliminary notice which must, amongst other requirements, set out the grounds on which the tribunal would be asked to make the order and steps for remedying any matters relied upon which are capable of remedy, giving a reasonable period for those steps to be taken.

15. On about 16 October 2019, Mr Meekcoms served a preliminary notice which set out such grounds and (in the fourth schedule, on page 113 of the bundle) such steps.

16. On about 6 December 2019, the Respondent produced a written response which did not dispute the validity of the preliminary notice.

17. At the hearing, Mrs Coleman confirmed that the Respondent accepted that the preliminary notice was valid and that a copy had been given to the Respondent's mortgagee. Mr Meekcoms confirmed that in this application for appointment of a manager the Applicants were relying only on the matters set out in the fourth schedule to his preliminary notice. These are examined below.

The tribunal's decision

18. In view of the agreement of the parties on this and having examined the preliminary notice, we are satisfied that it complied with section 22, and that even if we were wrong about that we would in relation to the matters relied on by the Applicants have made an order in exercise of our powers under section 24(7), of the 1987 Act.

Grounds under s.24(2) of the 1987 Act

19. Under section 24(2) of the 1987 Act, the tribunal may appoint a manager in various circumstances. These include where the tribunal is satisfied:

    a) that:

        - any "*relevant person*" - in this case, the person on whom a preliminary notice has been served under section 22, i.e. the Respondent (section 24(2ZA)) - is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them (section 24(2)(a)); or

        - unreasonable service charges have been made, or are proposed or likely to be made (section 24(2)(ab)); and

        - it is just and convenient to make the order in all the circumstances of the case; or

    b) that other circumstances exist which make it just and convenient for the order to be made (section 24(2)(b)).

Reserve fund – representations from the parties

20. In relation to a reserve fund from 2014, the Applicants said (in effect) that section 24(2)(a) was satisfied because the Respondent was in breach of an obligation owed to them under their leases and relating to the management of the Property.

21. Mr Meekcoms for the Applicants relied on the 2017 and 2018 Decisions. The 2017 Decision (paras. 46-7) expressed serious concerns that, although the accounts shown to them for 2014 were "*not very clear*" copies, these accounts seemed to indicate that a substantial reserve fund of £8,688 had been wiped out by "repairs" of £13,208, which seemed to that tribunal to be unreasonable, given the age of the building at that time. Mr Meekcoms believed the development was decorated to assist with the developer's sale of the freehold. That

tribunal expressed its concerns in robust terms in the 2017 Decision and followed this up in the 2018 Decision (para. 30), saying that this should be properly investigated and observing that possible breach of trust was a serious matter.

22. The Applicants' preliminary notice in October 2019 said (in effect) that nothing had been done about this despite the comments in those decisions. The notice contended that this was a breach of trust and of obligations owed to tenants under their leases. To remedy this, the preliminary notice required the landlord to provide evidence to answer these questions, or pay the monies back to the tenants.

23. In its written response in December 2019, the Respondent said the accounts showed that £3,157 in the year to 31 March 2013, and £10,051 in the year to 31 March 2014, the total sum of £13,208, had been spent on "general repairs". This expenditure had reduced the reserve fund to £798. The Respondent said there had been a surplus of £3,441 in the following short service charge period (when the accounting reference date was changed) from 1 April 2014 to 30 September 2014, which had been transferred to the reserve fund. It also claimed that £6,000 had been handed over by the previous landlord (Parkland Developments) in April 2014 and this sum was added to the reserve fund. It asserted that the surplus of £3,441 and the £6,000 handed over by the previous landlord brought the reserve fund back up to a "*healthy*" £9,441 in September 2014.

24. Mr Meekcoms pointed out that, in directions given in these proceedings on 17 April 2020, the tribunal required the Respondent to produce a statement addressing the issue of the reserve fund, disclosing any relevant documents from the time of transfer of the freehold on 1 April 2014 and giving a full explanation of the Respondent's understanding of what had happened to the reserve fund. He said that the Respondent had failed to do so and the money was still "*missing*". The written response provided by the Respondent in May 2020, following those directions, seemed to give less information about the reserve fund than had been given in the response to the preliminary notice. He said that the leaseholders had not received consultation notices about any repair works in 2013/2014, or any first refusal notices in respect of the sale of the freehold.

25. Mr Meekcoms accepted that this tribunal does not have jurisdiction to consider whether there has been a breach of trust or to deal with disputes about the right of first refusal. He said that the action or inaction in respect of the reserve fund was nonetheless a breach of an obligation owed to the tenants. He pointed out that the landlord had been able to find a copy letter (dated 5 November 2013) in relation to insurance (which, Mrs Coleman said, was one of the few documents it had been possible to find), but not proper details of what was done when it purchased the Property. The 5 November 2013 letter suggested

that "*Gateway*" had acted as agent for the developer, Parkland Developments (as mentioned above), but then Red Rock were appointed instead because the developer had problems with "*Gateway*". Nothing had been disclosed about what pre-sale information had been provided by the developer to the Respondent or when contracts had been exchanged. Mr Meekcoms suggested that there may have been a connection between the developer and the Respondent and that sale contracts might have been exchanged a long time before completion on 1 April 2014.

26. Mrs Coleman was asked whether the Respondent's purchase of the Property was an arm's length transaction, whether the consultation requirements had been complied with in relation to the works carried out in 2013-2014 and whether first refusal notices had been served on leaseholders before the sale. She said that she had not seen any purchase file. Mrs Coleman had started working for the Respondent only 18 months ago and did not have personal knowledge of the transaction. She told the tribunal that searches had been made for archived files but no further breakdown or explanation had been found other than that provided in the bundle. She confirmed that she was not aware of any connection between Parkland Developments and the Respondent.

27. When questioned about the Respondent's assertion in their written response in December 2019 (signed by Mrs Coleman) that £6,000 had been handed over by the developer following completion, Mrs Coleman explained that she had been informed by the Respondent's accounts department that in fact this had been a "loan", or on-account payment, from the former managing agents (Red Rock) to cover a deficit on the service charge account pending reconciliation of the service charge accounts. Mrs Coleman said that this was repaid to Red Rock over the following year(s). The parties referred to £1,524.16 as a specific sum claimed by Red Rock as such a "loan" which needed to be repaid to them, whether as part of that £6,000 or in addition. The Respondent indicated in its e-mail of 16 July 2020 that they and Red Rock are in dispute about this sum.

28. Mrs Coleman said that the clear copy service charge accounts (not the poor copies which had been difficult for the previous tribunal to read) explained what had happened with the reserve fund. The accounts for the year to 31 March 2013 showed that there had been nothing in the reserve fund as at 1 April 2012, that a substantial £19,480 in service charges were receivable that year against expenditure of £10,792 (including the £3,157 spent on repairs that year) and that the balance of £8,688 went into the reserve fund. The service charge accounts for the year to 31 March 2014 showed receivable service charges down to £10,905 and expenditure of £18,795 (including the £10,051 spent on repairs that year), taking £7,890 from the reserve fund and leaving the balance of £798.

29. This, Mrs Coleman said, was consistent with money being collected in the year to 31 March 2013 for planned substantial works to the Property which continued into the next service charge year. It was not a case of money being taken from an established reserve fund and it was wrong to say that the money was missing. She added that, as mentioned above, most of the leases of the Property were granted in 2009 and 2010, so at least parts of the Property would have been several years old in 2013/2014. In the witness statements filed by the leaseholders, Mr Roberts (of Flat 4) says that in January 2014 Lions Row had clearly been recently redecorated, including the interior of the building, with parking bays marked and exteriors in pristine condition. Mr Seaman (of Flat 8) confirms that in February/March 2014 extensive internal and external redecorations were carried out.

30. Mr Meekcoms said in his further written submissions after the hearing that the Applicants understood that the £19,480 shown as receivable in the accounts for the year to 31 March 2013 was a cumulative figure collected since 2009. He said that there were no accounts for previous years. He also raised queries about the "loan" of approximately £1,524 referred to above and other matters which, he said, indicated that the relevant accounts may not be reliable.

31. In 2019, the Respondent began a new consultation process for proposed internal and external decoration works. Mr Blewer, the current manager of the Property, gave evidence that this had been put on hold following comments from the leaseholders but that the Respondent generally starts looking at redecoration every five years. The process had proceeded as far as obtaining estimates (although these had not been provided to leaseholders). Mr Blewer confirmed that the estimates were £16,320 from Mitie, £18,040 from Hubbards and £17,429 from Delmat, all plus VAT. Mr Blewer was challenged about the need for the works and the overall costs. He said that in his view the Property was not in disrepair but needed redecoration and the three blocks would all need scaffolding for the exterior work, which he said would cost at least £3-4,000 on its own. He said that everything came down to what the surveyor advised should be set out in their specification of the work to be carried out; he mentioned a coat of paint for the interior and said that the externals and car ports needed to be done.

Reserve fund – the tribunal's decision

32. It seems there is a serious risk that the developer failed to comply with the consultation requirements in relation to the works carried out in 2013 and early 2014, but we have no real information about this. Moreover, the developer is not a "*relevant person*" under section 24, as noted above, so any such breach of the consultation requirements would not constitute breach by a "*relevant person*" of an obligation owed to the Applicants for the purposes of section 24(2)(a).

33. As Mr Meekcoms accepted, we do not have jurisdiction to consider whether there has been a breach of trust or to deal with disputes about the right of first refusal. As to the allegation of any other relevant breach in respect of the reserve fund spent before 1 April 2014, no particulars were given of the obligation said to have been breached. Further, the explanation given by Mrs Coleman, based on the clear copy accounts produced, is more likely than not to be true. We have considered the submissions from Mr Meekcoms that this may have been an accumulated fund which had not previously been accounted for and/or that the accounts may not be reliable, but we were provided with no real evidence for those submissions. The accounts, prepared by external accountants, state that there was nothing in the reserve fund as at 1 April 2012 and that the service charges receivable for the year to 31 March 2013 were £19,480. As Mrs Coleman said, these accounts (the only real contemporaneous evidence we have been provided with) are consistent with substantial funds being collected in 2013 to spend in 2013 and early 2014 on the extensive internal and external decorations described by Mr Roberts and Mr Seaman.

34. Similarly, despite Mr Meekcoms' understandable suspicions about the background to the transaction, we do not have any real evidence linking possible failings by the developer to the Respondent. The documents in the bundle indicate that the developer did not pay the fees of the accountants for preparing the relevant accounts, and the accountants approached the Respondent, as the new owner, for payment.

35. Considering all the evidence produced and the submissions made by the parties, and for the purposes of this application, we are not satisfied that the Respondent is in relation to the reserve fund (as held by the previous landlord before 1 April 2014) in breach of any obligation owed by it to the leaseholders under their leases and relating to management of the Property or any part of it.

36. However, it may be that other circumstances exist which make it just and convenient to make an order to appoint a manager, for the purposes of section 24(2)(b). We will consider this cumulatively, after examining the service charge issues below. In relation to the reserve fund issue, it counts against the Respondent that it:

    a) appears to have failed to make investigations, or even take proper steps to preserve records, despite the robust concerns expressed in the 2017 and 2018 Decisions, which were only three and four years respectively after the Respondent purchased the Property;

    b) has not explained the circumstances of its purchase and cannot show that it carried out any due diligence (in relation to compliance with consultation requirements or otherwise) when it purchased the Property, at a time when the redecoration works were being carried out or had just been completed; and

c) has given information to leaseholders which was mistaken or misleading, particularly the assertions in the written response in December 2019 that £6,000 had been collected from the developer and that this together with a £3,441 surplus brought the reserve fund back up to a "*healthy*" £9,441 in September 2014. Mrs Coleman explained at the hearing that (in effect) this was wrong; some or all of the £6,000 was a loan which was repaid. The accounts for 1 April to 30 September 2014 and the year to 30 September 2015 (as provided after the hearing) confirm this, showing deductions from the reserve fund in 2015 for "*handover funds from Parklands*". It also seems from these accounts that the "*surplus*" from 30 September 2014 was at least largely a product of the shorter financial year, put into the reserve fund to spend in the next year. These accounts show that (although receivable service charges were lower for both periods) the reserve fund was back down to £1,851 by 30 September 2015.

Service charge issues - representations

37. In relation to the following service charge issues, the Applicants said that section 24(2)(ab) of the 1987 Act was satisfied because unreasonable service charges had been made in the period from 1 April 2014 to 2018 (as determined, they said, in the 2017 and 2018 Decisions) and had been proposed for later year(s).

38. The preliminary notice in October 2019 required the Respondent to:

a) provide accounts for the year to 30 September 2019 in line with the previous decisions, or agreement from the leaseholders (the Respondent had on 10 February 2020 demanded a balancing charge, for the difference between the estimated costs determined by the tribunal in the 2018 Decision and the actual costs incurred for that service charge year); and

b) withdraw the Respondent's service charge demand (dated 22 August 2019) for the year to 30 September 2020 and replace it with one in line with the previous decisions (despite the previous decisions, the Respondent had issued the demand for this service charge year based on a much higher estimate).

39. As explained at the hearing, by section 24(2A) of the 1987 Act, a service charge shall be taken to be unreasonable for the relevant purposes if the amount is unreasonable having regard to the items for which it is payable, if those items are of an unnecessarily high standard or if those items are of an insufficient standard with the result that additional service charges are or may be incurred. Mr Meekcoms recognised that this was different from the reasonableness test under section 19 of the 1985 Act, under which the determinations in the 2017 and 2018 Decisions had been made, but said (in effect) that the findings in those

decisions showed that unreasonable services charges had been made for the purposes of section 24(2A) for the periods referred to.

40. Mrs Coleman confirmed that she had read the 2017 and 2018 Decisions. The Respondent did not dispute that unreasonable service charges had been made between 2014 and 2018, and that it had not reduced the charges to other leaseholders (in line with the reductions required by the 2017 Decision for Mr Meekcoms) until it was asked by the 2018 Decision to do so, but said that all necessary adjustments had now been made.

41. As to the balancing charge demand, and the accounts, for the year to 30 September 2019:

    a) Mr Meekcoms confirmed that these accounts had now been provided and he was on behalf of the leaseholders in negotiations with the Respondent to seek to reach agreement without the need for another application to the tribunal. However, he said that this had been an attempt to make charges which were unreasonable in amount, pointing in particular to insurance costs of £2,899, gutter clearance costs of £510 and waste removal charges of £862.19. He contrasted these with the estimated sums determined in the 2018 Decision.

    b) Mrs Coleman pointed to her letter of 14 May 2020, which asked Mr Meekcoms to provide comparable evidence of insurance premiums, and said that none had been provided. Mrs Coleman confirmed that, as explained in her letter, Gateway Facilities Management Limited inspected the gutters using an extending camera, that the gutters of all three blocks needed clearance and that they were cleared at a cost of less than £150 plus VAT per block. Mrs Coleman said that the Respondent has a duty to keep the communal areas clean and tidy and if the Property suffered from fly tipping the Respondent had a duty to remove the waste - and is entitled to recover the costs through the service charge.

42. As to the service charge demand for the year to 30 September 2020, Mr Meekcoms accepted that in response to the preliminary notice the Respondent had withdrawn this (saying that it was doing so as a gesture of "*goodwill*") and replaced it with one which was in line with the previous tribunal determinations. However, he said that this had been another attempt to make charges which were unreasonable in amount and pointed out that it had been maintained despite his initial reply asking the Respondent's agent to revisit this by reference to the previous decisions and even enclosing copies of those decisions in case the relevant individual was not aware of them. He contended that (as indicated in the preliminary notice) this conduct constituted other circumstances which made it just and convenient to appoint a manager.

43. Mrs Coleman was asked why, given the concerns expressed and determinations in the 2017 and 2018 Decisions for the previous periods, the Respondent had tried again to make what appeared to be unreasonable service charges and had persisted with that despite the clear correspondence from Mr Meekcoms, until after he served his preliminary notice to seek a tribunal-appointed manager. Mrs Coleman accepted that he should not have had to resort to this. She said that the relevant property manager, Perry Binyon, was at the time relatively new to Gateway and was no longer with them. Mr Blewer began managing the Property for Gateway from January 2020. Mrs Coleman said that Gateway historically had difficulties with retention of managers but had now recruited, and was planning, for long-term retention. Mr Blewer had not yet inspected the Property, because his first inspection was due in March and delayed by the Covid-19 restrictions, but said he would go as soon as he was allowed. Mrs Coleman was asked whether the Respondent was genuinely changing its behaviour. She said that it was. She had joined 18 months ago and said that she was working to tighten up policies and procedures.

Service charge issues – the tribunal's decision

44. Even allowing for the different tests for the purposes of section 24 of the 1987 Act and section 19 of the 1985 Act, the matters recorded in the 2017 and 2018 Decisions indicate that unreasonable service charges were made for the years covered by those decisions. This was not disputed by the Respondent. In the circumstances, we are satisfied that unreasonable service charges have been made, even if "only" during the period of 2014 to 2018 covered by the 2017 and 2018 Decisions, which is most of the period of the Respondent's ownership.

45. The balancing charges for the year to 30 September 2019 are not necessarily unreasonable. The mere fact that they are higher than the estimated charges determined by the 2018 Decision does not make them unreasonable, because (as that decision makes clear) reasonable final costs may be greater than the estimated costs. The Respondent has given explanations in relation to the items identified by Mr Meekcoms which (on the face of it) may justify some of the extra charges. This will be a matter for the parties to investigate, negotiate and agree if they can, or make a new application to the tribunal under section 27A of the 1985 Act to determine if they cannot.

46. It appears that the Respondent demanded unreasonable service charges for the year to 30 September 2020, despite the communications from Mr Meekcoms and the previous decisions. We do not have enough information to assess these charges individually; the Respondent withdrew the demands, but claimed it was doing so as a matter of "goodwill", without explaining any good reason for the additional proposed costs. In the current circumstances, these demands do not demonstrate that unreasonable service charges are

proposed or are likely to be made for this service charge year, because they have been withdrawn and replaced with demands in line with the previous determinations.

47. In addition to the finding of unreasonable service charges for the purposes of section 24(2)(a), it may be (as mentioned above) that other circumstances exist which make it just and convenient to make an order to appoint a manager for the purposes of section 24(2)(b). This is considered below under the "just and convenient" heading. The relevant circumstances in relation to the reserve fund are noted above. In relation to the service charge issues, it counts against the Respondent that:

    a) as set out in the 2018 Decision, it attempted to make unreasonable service charges to the other leaseholders despite the determinations in the 2017 Decision of the service charges payable by Mr Meekcoms (the Respondent's conduct at that time seems to have been explained by reference to an individual, Mr Coe, who had since left the Respondent); and

    b) it demanded (apparently unreasonable) service charges for the year to 30 September 2020 and pursued this despite the reply and copy decisions from Mr Meekcoms, until he resorted to giving his preliminary notice (conduct which has again in effect been blamed on a different individual, Mr Binyon, who has since left the Respondent).

<u>The proposed manager</u>

48. Ms Abby Brealey MIRPM AssocRICS, the proposed manager, attended the hearing to give evidence as to her suitability. She confirmed that she was completely independent from the parties and that a leaseholder who was director of a right to manage company had recommended her to Mr Meekcoms as a property manager.

49. Ms Brealey had eight years' experience of specialist block management with Rylands Associates, who were no longer trading. She said she had decided to leave that company because she was not comfortable with the way it was operating when individuals left, having been asked to act as head of property management without access to full financial information and having been contacted by RICS with advice that she would be responsible for regulation of the finances of the company. Ms Brealey left to set up her own company, Metta Property Management Limited, in January 2019, based in Westcliff-on-Sea in Essex. She is the sole director and shareholder. She emphasised that her company does not have a generic client account, but sets up specific client accounts for each managed property, so that service charges are paid by leaseholders straight into their dedicated client account which is reconciled every week. She had experience of managing buildings with

disputes between leaseholders and landlords, mentioning a property which had previously been managed by Rylands Associates before it became insolvent. She said that Metta Property Management had a team of five people, who promote leaseholder awareness and have an open office. If Ms Brealey was appointed, the general point of contact for leaseholders and the landlord would be Lauren Johnson, who was an office-based property administrator and did not have any property management qualifications. Ms Brealey had professional contacts for lawyers, accountants and surveyors.

50. Ms Brealey had not previously acted as a tribunal appointed manager. She understood that she would need to follow the terms of the order appointing her as manager, but no draft order had been produced (other than a single page note, produced by Mr Meekcoms at page 315 of the bundle, of some points to be included in any order). She considered that a fixed appointment for two years was appropriate. She understood that she would have personal liability but in her management proposals (at page 311 of the bundle) had said only that before appointment she would seek additional insurance cover. At the hearing, she said that her company currently had a £500,000 limit of cover but she had been consulting insurers and would be able to increase this to £5 million (because this was something which would be sought by other clients) and include cover for the risks of acting as a tribunal appointed manager in her own name. No evidence of this was provided.

51. She had read the leases and was comfortable that there was no need to seek to change them. She had visited the Property, but the Covid-19 restrictions had prevented a full site inspection. Her impressions were that the Property was not in bad condition and no urgent work was needed. Her management proposals said that maintenance was due including redecoration, lighting improvements and car park markings. She did not know what the potential costs might be or whether she would need to collect in additional funds to pay for them. She did not know how much was in the current service charge account and had not been provided with a copy of the bundle for the hearing. She had not seen any of the service charge accounts. She was aware that there had been previous tribunal decisions, but had not read either of them.

52. Ms Brealey's fees would be £225 per unit (£2,475). VAT was not charged on that sum, apparently because Metta Property Management had not yet reached the VAT registration threshold; it was not VAT registered. There would be extra charges for debt recovery, other administration charges and charges of no higher than 10% for major works. She told us that these charges were set out in Metta's standard terms, but those had not been provided to us. Ms Brealey said that the order appointing her should allow for such charges, but again no draft order and no details of such charges had been provided.

The tribunal's decision

53. On the evidence we heard, we did not consider that Ms Brealey is ready yet to be a tribunal appointed manager. She gave a positive presentation and with our agreement she attended the entire hearing to observe after she was released. However, she does not yet have the experience we would look for and was not sufficiently prepared for such an appointment, generally or in relation to this Property. More is expected of a tribunal appointed manager than would be required of a normal managing agent appointed by a landlord or right to manage company. Ms Brealey had not produced evidence of insurance cover (or actual proposed terms of such cover) for the considerable risks of acting as a tribunal appointed manager. She had not asked for copies of or read the service charge accounts or the 2017 and 2018 Decisions which were relied on by the Applicants as a ground for her appointment. She did not know the financial position and she had not produced a properly detailed management plan or full fee details. Further, no real draft order had been produced and it appeared that Ms Brealey had not been involved with the production of the very brief document which had been submitted for the Applicants. We would expect the proposed manager to be closely involved with the preparation of a draft order setting out precisely the purpose of the order, the powers and duties of the manager, fees, insurance, handover and accounting arrangements and so on.

Just and convenient

54. Mr Meekcoms referred to the matters summarised above, said that the grounds for appointment had been made out and said (in effect) that the Respondent could not be trusted. He understood this was a serious application, where the tribunal was being asked to appoint a manager with functions of management and/or of a receiver over the property of the Respondent, against its wishes. He pointed to the works in 2013/2014 and the planned redecoration works, saying that he had learned of the potential costs in the region of £16,000 plus VAT for the first time at the hearing. He thought those costs were ludicrous and would be surprised if the actual costs were 25% of this. He referred to the reserve fund and service charge issues and said that these are simple blocks of 11 flats in total which do not need substantial sums to be spent on them and should not need applications to the tribunal. He referred to the Respondent's group of companies, saying that everything from insurance to facilities is done by one of the group and they all charge between themselves to profit from leaseholders. It would not be straightforward and would be costly for the Applicants to claim the no-fault right to manage under Part 2 of the Commonhold and Leasehold Reform Act 2002, because there are three separate blocks. The leaseholders did intend to pursue collective enfranchisement as a long-term solution, but appointment of a manager as requested would give them security of proper management for two years in which to do that.

55. Mrs Coleman said that appointment of a manager is a remedy of last resort which was not justified by the circumstances, particularly where the Applicants have said that they wish to pursue collective enfranchisement if they do not wish to pursue the no-fault right to manage. She said that there were elements of disagreement but applications from or difficult discussions with leaseholders were not uncommon in residential management. She said that there had been no breaches or other issue(s) which were serious enough to justify a management order and, as mentioned above, she had been brought in to tighten up procedures. There was now a new manager, Mr Blewer. Mrs Coleman said that Gateway was hoping to retain managers for the longer term and work with the leaseholders at the Property to repair the relationship. Mr Blewer had given more information about the major works consultation which was begun in 2019; the cost and other information would have been provided earlier, but the process had been put on hold, as explained above. He said that he would like to have more dialogue with leaseholders.

The tribunal's decision

56. Although it is often said that making an order to appoint a manager is a remedy of last resort, the actual test is whether we are satisfied that it would be just and convenient (here, to make such an order based on the above finding of unreasonable service charges in all the circumstances of the case - or that other circumstances exist which make it just and convenient for such an order to be made). This is not something which the tribunal would do lightly.

57. Mr Meekcoms presented the Applicants' case effectively, producing good document bundles and making helpful submissions. The conduct of the Respondent since it purchased the Property, as noted above, and the fact that the application is supported by all the leaseholders, are significant factors. However, in this case and at this stage, having considered all the evidence and the matters raised by the parties, we are not satisfied that it would be just and convenient to make an order under section 24 of the 1987 Act to appoint a manager. In particular:

    a) On the evidence produced, there are no ongoing or threatened problem(s) which are sufficient for it to be just and equitable for us to make a management order. In relation to the proposed redecoration works, the Applicants may wish to discuss the proposed timing and specification with the Respondent at an early stage and engage with any new consultation process. The Applicants can consider applying to the tribunal under section 27A of the 1985 Act to determine actual or prospective service charges if they are unable to reach agreement with the Respondent about these proposed works or any other service charge matters while they prepare for/pursue collective enfranchisement, if that is what they choose to do; and

b) For the reasons given above, we were not satisfied that Ms Brealey would (based on her experience and preparation in this case at this stage of her career) be suitable to act as a tribunal appointed manager. Further, no real draft order had been prepared. The suitability of the proposed manager, and the terms of the proposed order, are fundamental to the question of whether it would be just and equitable to appoint a manager.

58. Although on this occasion we are not satisfied that we should appoint a manager, the Respondent has built up a significant track record of demerits in relation to the reserve fund and service charge issues, as identified above. It has, effectively, promised to improve, and based on the matters recorded in this decision the Respondent may find it difficult to rely on inadequate records/procedures or the conduct of individual managers in future. If the Respondent fails to improve, the Applicants will not be prevented from making another application for appointment of a manager by reference to the conduct we have recorded and any future issues, but they may wish to explore any alternative remedies first.

Section 20C application

59. Mrs Coleman confirmed that the Respondent will not be seeking to recover any of the costs of the hearing or these proceedings through the service charge. To confirm that the Respondent may not do so, we consider that it is just and equitable to make an order under section 20C of the 1985 Act to that effect.

Costs

60. In his further written submissions, Mr Meekcoms on behalf of the Applicants applied for a costs order to recover the application and hearing fees plus £150 printing costs. He said that the Respondent's conduct had been unreasonable. We have considered this application and decided not to make such an order. For the purposes of Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Respondent has not acted unreasonably in defending these proceedings and, in all the circumstances, it is appropriate for each party to bear their own costs.

Name: Judge David Wyatt **Date:** 14 August 2020

Schedule – Applicants

Flat	Applicant
1	John Paul James
2	Sofia Christiansen
3	Joseph Rogers
4	Dean Roberts
5	Mark Mckechnie
6	John Paul James
7	Paul Meekcoms
8	Irwin John Seaman
9	Lewis Brand

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).