FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/29UL/LVM/2020/0001
Property	**:**	The Grand, The Leas, Folkestone, Kent CT20 2LR
Applicants	**:**	Hallam Estates Ltd (1) Mr Michael and Ms Doris Stainer (2) Mr Robert Moss as trustee of the Stainer Trust (3) Ms Heather Greenwood as attorney for Ms Millie Tomlinson (4) Mr Steve Bispham (5) Ms Jennifer Bostock and Mr Julian Daggett (7) Mr Mark Foley (8)
Representative	**:**	Mr T Qureshi of Counsel, instructed by M & M Solicitors, Cardiff, for the Applicants.
Respondents	**:**	Ms Alison Mooney (1) The Association of the Residents in the Grand, through their Chairperson Mr Peter Cobrin (2)
Representative	**:**	Mr S Madge-Wyld of counsel, instructed under Direct Public Access, for the First Respondent. The Second Respondents in person.
Tribunal Members	**:**	Judge M Loveday Mr K Ridgway MRICS Mr P Gammon MBE
Date of hearing/venue	**:**	30 June and 1 July 2020 (video proceedings)
Date of decision	**:**	11 August 2020

DECISION

Introduction

1. This is an application to vary the terms for the appointment of a manager under s.24(9) Landlord and Tenant Act 1987. The present Management Order is dated 5 July 2018.

2. The application was dealt with by way of video proceedings on 30 June and 1 July 2020. At the end of the hearing, the Tribunal gave its decision orally, in accordance with Rule 36(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and a decision notice was sent to the parties on 3 July 2020. The decision was as follows:
   (a) The variation proposed by the Applicants, namely the application to discharge the Manager, was dismissed.
   (b) The Tribunal would vary the Management Order under s.24(9) of the Act to give further directions relating to the exercise of the Manager's functions under Para 19 of the Management Order.
   (c) The parties should submit, by no later than 4.00pm on 15 July 2020, draft forms of further directions.

3. These full written reasons have been delayed until the Tribunal was able to consider the further written representations, and a brief decision with those directions is attached.

Background

4. The relevant history is summarised in paras 6 to 17 of an earlier Tribunal decision dated 29 May 2020 (CHI/29UL/LAM/2019/0017) and need not be repeated here.

5. The present application was made on 4 March 2020 while the previous matter was still pending before the Tribunal. The seven Applicants included the freehold owner (Hallam Estates Ltd) and six lessees of various flats in the premises. The Respondents were the Manager (Ms Mooney) and the Association of Residents in the Grand, which is a Recognised Tenants Association under s.29 Landlord and Tenant Act 1985. The latter acted through their chair, Mr. Peter Cobrin. Although there was some suggestion the Second and/or Third Applicants may no longer have any legal interest in any of the flats in the building, no point was taken by the Respondents about their ability to be parties to the application.

6. The variation proposed that the First Respondent should be replaced with a new appointee. At the date of the hearing, the Applicants proposed that the new Manager should be a joint appointment of Mr Simon Crowley and Ms Nicola Fairhurst MRICS.

7. Like previous proceedings involving these premises, case management proved challenging. Directions were given on 11 March 2020 with a target date for hearing in June/July 2020. In view of the Covid-19

pandemic, further directions were given on 23 March 2020, which offered the possibility of a paper determination without a hearing. This proposal was rejected and various informal applications were made to vary the timetable. Further directions were given on 15 April 2020 for the application to be determined by way of video proceedings. The Tribunal disposed of an application to debar the First Applicant. Further directions were given on 1 June 2020 listing the matter for a remote hearing on 30 June and 1 July 2020. The Tribunal refused an application to adjourn the hearing on 24 June 2020, at which time the Respondents alone intimated they relied on some twenty-four witnesses of fact.

8. At the hearing, the Applicants were represented by Mr T Qureshi of counsel and the First Respondent was represented by M Madge-Wyld of counsel. Mr Cobrin appeared in person.

The approach to variation under s.24(9)

9. The right to apply for the appointment of a manager under Pt.II Landlord and Tenant Act 1987 is a fault-based right exercisable where statutory grounds are made out and it is "just and convenient" to appoint a manager: *Service Charges & Management* (4th Ed.) at para 23-01. Pt.II implemented a key recommendation of the *Report of the Committee of Inquiry on the Management of Privately Owned Blocks of Flats* chaired by Sir Edward Nugee Q.C. The provisions prescribe a process for a tenant or tenants to seek the appointment of a manager, a process which has recently been described as a "problem-solving jurisdiction"[1].

10. The principal operative provisions are at s.24(1) and (2).

> **"24 Appointment of manager by a tribunal**
> (1) [The appropriate tribunal] may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies-
> (a) such functions in connection with the management of the premises, or
> (b) such functions of a receiver,
> or both, as [the tribunal] thinks fit.
> (2) [The appropriate tribunal] may only make an order under this section in the following circumstances, namely –
> (a) where [the tribunal] is satisfied –
> (i) that [any relevant person] either 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 or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been

[1] Chaun-Hui v K Group Holdings Inc [2019] UKUT (LC) 371; [2020] L.& T.R. 5 at para 34.

reasonably practicable for the tenant to give him the appropriate notice, and

...

(ac) where [the tribunal] is satisfied-

(i) that [any relevant person] has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

(ii) that it is just and convenient to make the order in all the circumstances of the case".

Subsections 24(3)-7) set out the scope of the management order a tribunal may make to address the problem or difficulty in management it has identified.

11. The present application is made under s.24(9), which permits the tribunal, on the application of any interested party, to apply to vary or discharge an order made under s.24. The provision is as follows:

"(9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.

(9A) the tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied-

(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and.

(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order."

12. There is some direct authority about a Tribunal's approach to s.24(9) variation applications, namely the Court of Appeal judgment in Orchard Court Residents Association v St Anthony's Homes Ltd [2003] EWHC 1049; [2003] 2 E.G.L.R. In Orchard Court, the appellant sought to discharge a management order under s.24(9). It argued that an applicant had to establish that one of the conditions in s.24(2) was met - as if a s.24(9) applications was a fresh application to appoint a manager. But the court disagreed. It dealt with the issue as follows:

"11. It is to be noted that the legislature has not thought it fit to embody in section 24(9) the various criteria set out in section 24(2) . There is a clear contrast between the requirements when an order is made and when an order is varied. It seems to me that the section is drawing a distinction between making an order and varying an order. Although it might perhaps be said that in some circumstances the court is always making an order when it varies an existing order, that cannot be the correct interpretation in the context of this statutory provision.

> 12. There are no explicit criteria in section 24(9) in contrast to section 24(2) . Moreover, if an application is made by a relevant person (such as a landlord) to vary or discharge an existing order, the legislature has expressly required the Tribunal to be satisfied of certain matters (see section 24(9A)). The inclusion of those express requirements in (9A) and the omission of anything of that sort in subsection (9) itself must be seen as deliberate and confirms the contrast between section 24(2) and section 24(9).
> 13. Section 24(2) and section 24(9) deal with quite different situations. Section 24(2) is concerned with making an order where one does not exist, whereas section 24(9) is dealing with an order which is already in existence because the Tribunal has already been satisfied that the tests in section 24(2) have been met.
> 14. I quite accept that, in exercising its discretion under section 24(9) , a Tribunal must have regard to relevant considerations; that is trite law. But when one looks at paragraphs 20 and 21 of the Tribunal's decision, it is quite clear that this Tribunal did have such regard[2]. However, section 24(2) did not require it to be satisfied that at least one of those thresholds had been passed. Nor can I see any reason why this particular type of variation, the extension of a manager's term, should have to meet the criteria in section 24(2) . Mr Heather has conceded that there is no limit on the length of time for which a manager may be appointed in the first place. In those circumstances, why should one require the section 24(2) tests to be met all over again simply because a variation is sought which will extend his term of appointment?"

The Tribunal therefore does not need to be satisfied whether s.24(2) grounds are made out before considering a variation under s.24(9).

13. In his closing submissions, counsel for the Manager submitted that absent a finding of fraud, serious and repeated breaches of the RICS Service Charge Residential Management Code, or a refusal by the Manager to manage the building at all, it would not be "just and convenient" for an appointment to be discharged. There needed to be "good and weighty reasons" to do so. Although the Tribunal is reluctant to attempt to set out any definitive list of circumstances where a manager might be discharged or replaced under s.24(9), it agrees the default position is that a manager should be left in place. Section 24(9A) places the burden on any applicant to satisfy a tribunal of two conditions before a tribunal may exercise its discretion under s.24(9). The two provisions are apt to deal with some practical problem with the existing management order, not (as was explained in Orchard Court) to enable the reopening of issues already decided against a landlord at the appointment hearing. Variation applications should not be used to enable continuous re-litigation of the original issues in the 2014 and

[2] These "relevant considerations" were not set out in the Court of Appeal judgment. But reference can be made to paras 20-21 of the LVT's decision in Orchard Court RA v St Anthony's Homes Ltd, 31 October 2002, (LVT/VOD/026/012/02).

2018 Management Orders which might hamper the manager in carrying out her functions.

14. Procedurally, counsel for the First Respondent further contended that the Tribunal should consider the suitability of the proposed joint managers as a preliminary issue. In the event the nominees were not "up to the task" of managing the Grand, it would then be unnecessary to go onto considering a discharge or variation of the order. Although this approach had the very real advantage of possibly shortening the proceedings, the Tribunal did not consider it was the appropriate way to dispose of the matter. It is for the Applicants to establish there is a basis for varying the existing management arrangements and the identity of any new Manager is simply a consequence of a decision to vary. The procedure suggested by the Respondents effectively puts the cart before the horse. The Tribunal therefore indicated it would first hear the substantive objections to the current manager before dealing with the remaining issue of who the replacement should be.

The Applicants' evidence

15. The application form and the Applicants' statement of case contained wide ranging challenges to the Manager's conduct. According to the 2018 Management Order, the First Respondent's appointment took effect 28 days from the decision of 5 July 2018 (or a later date if there was an appeal). But the order also appointed the First Respondent as joint Manager with her predecessor (Mr David Hammond FRICS) on an interim basis from the date of the decision: see para 2 of decision. Although it is understood the 2018 Management Order will not expire until January 2021, the issues raised in the application therefore concern management of the premises since 5 July 2018.

16. By the end of the hearing, the criticism of the Manager had been narrowed to three broad headings:
    (a) Failure to maintain the property adequately.
    (b) Failure to communicate.
    (c) Failure to act fairly and impartially in dealings with the premises.

    The Applicants originally also argued there were "massive accounting irregularities": see paras 23-29 of Applicants' Statement of Case. But no evidence of such irregularities was produced, and counsel did not pursue the argument at the hearing.

Mr Michael Stainer

17. Mr Michael Stainer occupies the Dorchester Suite at the Grand. At one time or another he has had an interest in some 19 apartments, and he is a former director of the freehold company. Mr Stainer has been party to numerous applications and appeals in the tribunals and the courts relating to the premises over the years. He gave evidence at the hearings which led to both the 2014 and 2018 Management Orders. Most recently, he also gave evidence to this Tribunal in the Manager's application for directions determined on 29 May 2020.

18. Mr Stainer relied on a witness statement dated 29 May 2019 and gave remote oral evidence to the Tribunal.

19. Mr Stainer maintained the Manager had become personally involved, making her ineffective and leading to "wrong-headed management decisions". In particular, she employed Mr Cobrin as her local agent and had sought to be represented by Mr Cobrin at the hearing of the application for s.24(4) directions on 5 May 2020. The link with Mr Cobrin was "divisive and provocative" because the Second Respondents represented a faction that wanted to change the development. Mr Cobrin had commenced litigation against Mr Stainer personally (including a slander claim) and "it was unprofessional of the [Manager] to take a side in this matter and in the development".

20. As far as repairs and maintenance are concerned, Mr Stainer made the following complaints:
    (a) The building had not been painted in the six years since there had been a statutory manager in place, despite external decorations being a priority. There was no associated waterproofing. The west elevation in particular, was visibly in poor condition. The defects were illustrated by photographs of metal balconies at second floor level with peeling paintwork, exposed and open jointed exterior woodwork, open jointed brickwork and metal rainwater goods with aging paintwork etc.
    (b) Structural repairs remained outstanding, notably the central section of the south elevation at third to fifth floor level which is falling away from the main structure. This area had been affected by bomb damage during WW2. Metal tie bars supporting parts of this structure had deteriorated causing structural failure, even though the cost of providing new tie bars was relatively modest.
    (c) Lead work was blown off the roof in late 2019.
    (d) Serious disrepair had continued particularly on the west elevation, despite that being a major reason for the tribunal's appointment of a Manager. The plan to undertake works to the west elevation was inadequate.
    (e) An access control system was in the course of being introduced, which limited access to common areas. This was potentially expensive and troublesome, especially for elderly residents, and was unnecessary. Mr Stainer accepted that access needed to be managed for fire safety reasons, but there needed to be some alternative provision for privacy and maintaining the relationship between commercial and residential uses within the building.

21. Mr Stainer was cross-examined in some detail. He accepted that bankruptcy orders had been made against him and Mrs Stainer on 8 November 2018 and it was put to him that the leasehold apartments they formerly held were now vested in the trustees in bankruptcy. Mr Stainer stated that the trustees in bankruptcy had never taken possession of the apartments, he and Mrs Stainer remained in legal possession and the "setup had continued as before". It was further put to Mr Stainer there

was an outstanding service charge liability of around £300,000 (around 30% of the total sums in the bankruptcy), but Mr Stainer did not accept anything was owed in respect of service charges for the apartments. The alleged arrears were "completely concocted" and he had never seen any evidence to show any sum was owed at all. Mr Stainer was referred to a decision of this Tribunal made in January 2018 which determined the Second Applicants were in fact liable to pay service charges of about £130,000[3]. Mr Stainer stated the lessees had counterclaims against the freeholder that would offset those liabilities and their total liability "is nil". Mr Stainer was also asked about the liabilities of Hallam Estates under para 3(e) of the 2018 Management Order. He accepted he was a consultant for the freeholder, and its position was that (i) it was owed money rather than owing anything, and (ii) it was entitled to proper audited accounts.

22. Mr Stainer was taken to the list of works recorded by the First Respondent in her report to the Tribunal dated 25 September 2019. His comments were as follows:
    (a) The driveway. Mr Stainer accepted the Manager undertook works to the driveway in front of the west elevation. The kitchen stores of the commercial premises in the basement projected underneath this driveway, and when the contractors chiselled off the surface of the driveway, they damaged the roof of the storeroom. The store suffered water ingress.
    (b) Lift upgrade. Mr Stainer accepted this work was "a good job".
    (c) Roof works. Mr Stainer had seen some work to cure roof leaks, but such works which had been carried out were done incompetently. He referred to the piece of lead mentioned above which the contractors had initially left on the roof and then "tossed" onto the ground from height. He did not accept that roof works needed cherry pickers and good weather – he could have done the work himself with a safety harness.
    (d) Fire enforcement works. Fire Enforcement Notices had been served in August 2017. Although the Manager had secured a delay to compliance works by negotiating an extension with the fire authorities, this was not "a good thing". Safety had been "seriously neglected" for years. Fire safety works should be a "top priority" but the Manager had not treated them as such.
    (e) Major works. Mr Stainer considered the works to the southern elevation were particularly urgent, and that the cost of replacing the tie rods was "small beer". It was put to him that the Manager's overall assessment of the cost of structural works to the southern elevation was much higher, and that this work would involve scaffolding. Mr Stainer's response was the Manager had spent money on "lawyers and other things" rather than such work.

    In an exchange with counsel, Mr Stainer suggested the Manager's failure to get things done was driven by a motivation to acquire the freehold, and that delays in carrying out work contributed to that

[3] Referred to in decision of 5 July 2018 at para 108.

objective. Undermining maintenance reduced the value of the property. He suggested “Mr Cobrin’s agenda” had overtaken “the agenda to repair” the property and that there was an intention to “scupper the commercial operation”. The Manager tried to deter customers from coming to the Grand and she “had become the operating arm of the Cobrins”.

Mr Mark Foley

23. Mr Mark Foley is the beneficial owner of a lease of the Buckingham Suite, having acquired it from his late father's estate in May 2019.

24. Mr Foley's witness statement is dated 29 May 2020, and he gave oral evidence at the remote hearing.

25. Mr Foley gave evidence of the strong association between the Manager and Mr Cobrin which had "compromised the proper conduct of [her] duties". It is worth reproducing *verbatim* what Mr Foley says in paras 5-6 of the witness statement:

> *"5) in January this year in a telephone conversation with Mr. Peter Cobrin he advised me that in conjunction with Mz Mooney he was instigating a plan to ensure the demise of the existing commercial elements of the Grand with expectation being that this process will contribute to diminishing the value of the freehold of the building and that the freehold would then be acquired for an affordable sum of circa GBP 250,000.00. He further explained that this low freehold value would be achieved owing to the excessive costs associated with the repairs to the fabric of the building, particularly the West Elevation. Mr. Cobrin further explained that as owner of the Buckingham Suite my liability for the extra works would be in the order of GBP 40,000.00 but that they would be an option for the leaseholders to fund their additional charges under a mortgage so that the monthly out goings would be manageable. He said that following obtaining of the freehold the building would then be professionally run by Mz. Mooney.*
>
> *"6) Following consideration of the afore noted conversation with Mr. Cobrin … I am of the opinion that Mr. Cobrin and Mz Mooney are involved in an improper alliance whereby the cost of maintaining the Grand may be being deliberately inflated in order to reduce the value of the freehold, furthermore that excessive costs for the required repairs may be being proposed in order to fund this scheme at the expense of the leaseholders".*

26. Mr Foley's statement went on to deal with a particular instance of disrepair, namely that on two occasions in recent months the Buckingham Suite had suffered an ingress of sewage caused by a blocked outlet pipe on the outside of the building. There were plainly highly offensive and distressing consequences of this. But dealing with the First Respondent proved "difficult and I found her approaches as confrontational and unnecessarily combative". The Manager had refused to provide full compensation. Again, it is worth reproducing a passage from para 7 of the witness statement *verbatim*:

> "*I am of the opinion that supporters of the afore noted scheme are dealt with favourably in instances such as this whereas the leaseholders who are not in favour are dealt with harshly by ~~Mz~~ Mooney*".

Mr Foley was also concerned that his father had paid service charges of £7,215, following the service of s.20 notices in relation proposed works to the west elevation. But those works had not been done. Mr Foley suggested the Manager should be replaced by "a competent and unbiased party who is able to work on good terms with the freeholder".

27. In cross-examination, Mr Foley was taken to the explanation for the deferral of works to the west elevation given by the Manager to a residents' meeting on 23 June 2019. The report of the meeting stated that the works had had to be re-tendered and that in the meantime, the pre-payment to the leaseholders would be recredited to them. Mr Foley did not accept any of the works costs. They "seemed inflated" and there was "another apparent agenda". But he accepted he did not have a survey to support this.

Mr Stephen Bispham

28. Mr Bispham is lessee of the Marlow Suite. He is another veteran of litigation at the Grand and on a previous occasion argued the First Respondent's predecessor as manager was incompetent: see decision of 5 July 2018 at para 152.

29. Mr Bispham's witness statement is dated 29 May 2020 and he gave evidence at the hearing remotely.

30. Mr Bispham was concerned that significant service charges paid for works to the western façade had been applied to other matters. the First Respondent had "admitted that the money, taken in Trust for West Elevation work, had now been spent on other urgent work – believed to be repair or refurbishment of the South Lift and some on the discharge of Fire Enforcement Notices". He also gave details of the history of communications with the Manager about the various works to the premises. He explained that at a residents' meeting on 19 December 2018, the Manager assured him and Mr Daggett that service charge paid for the major works would be refunded in full". There was a further meeting on 4 March 2019 where the western façade works were discussed. In April 2019, Mr Bispham and Mr Daggett compiled a list of 20 questions and 12 "concerns" about various aspects of management, but the Manager failed to respond. Mr Bispham then produced a copy of minutes of a residents' meeting on 23 June 2019 where the Manager discussed several detailed aspects of management, including works. Mr Bispham also stated that on several occasions he had enquired about plans for restoring the building, with estimated costs, priorities and timelines. These had never been provided.

31. In terms of works, Mr Bispham's complaint is generally that major works and fire safety works have not been carried out. He has requested plans for these, but nothing was forthcoming. In particular, on 2 November 2019 a "fascia" above a window in his apartment was blown down in a storm. This had resulted in water damage to the Marlow Suite, and this in turn affected his wife's health. The Manager did not consider this was something which could be claimed on insurance and (after four weeks) she emailed to say there was not even any proof the item had come from the building. The First Respondent's emails showed she did not support an insurance claim by Mr Bispham.

32. Mr Bispham also gave evidence about the Second Respondents over the previous three years, including a "long term strategy of 'e-bullying" the landlord, the commercial business and staff and some lessees (including me) via Twitter and a local bullying site called Shepway Vox".

Mr Julian Daggett

33. Mr Julian Daggett is lessee of the Ilchester Suite. Mr Daggett was involved as a party and a witness in the 2014 and 2018 applications and the most recent application for directions.

34. Mr Daggett's witness statement is dated 25 May 2020 and he gave remote evidence to the Tribunal.

35. Mr Daggett stated he had raised the question of independence even before the First Respondent was appointed in 2018 and his statement exhibited a copy of the objection he made at the time. Since then, the Manager had not acted fairly and impartially. He produced an email exchange in early 2019 about a local amenity society known as the Leas Residents Association. Mr Stainer had apparently been the representative for the premises on the committee of the group and the Manager had attempted to replace him with one of the Second Respondent's committee members. Mr Daggett also produced an exchange of emails about the Shepwayvox.org website in February 2020. On 5 February 2020, the website carried an article about alleged debts at the Grand, which specifically mentioned an estimated cost of £4m for works. Mr Daggett contacted the Manager and complained that the management plan for the premises had been provided to the website before it was given to the residents. Ms Mooney replied that Mr Cobrin was not an employee of her firm, but acted as her local agent. She told Mr Daggett he would have to ask Mr Cobrin whether the article came from him.

36. In terms of communication, Mr Daggett stated that quarterly surgeries had not been held in accordance with para 51 of the 2018 Management Order. Properly chaired and minuted meetings with residents had never taken place. Mr Daggett referred to the minutes of the residents' meeting on 23 June 2019, but this was the only record of a residents meeting ever made. Mr Daggett produced copies of individual letters circulated to

lessees dated 26 September 2018, 28 November 2018, 16 January 2019, 27 February 2019 and 10 April 2019. There was a copy of the joint request made with Mr Bispham (emailed on 15 April 2019), together with a detailed 4-page response dated 16 April 2019. Mr Daggett requested a summary of relevant costs on 31 December 2019, but the First Respondent replied the same day that this was premature. The Manager provided some information about cleaning costs on 6 January 2020.

37. As far as works are concerned, Mr Daggett supported the above complaints that fire safety works and major works had not been carried out, despite the fact that significant sums of money were collected and (in some cases) "ring fenced". The Manager had had 20 months to address fire safety works, despite Mr Hammond having done much of the preparatory work.

The Respondents' evidence

Ms Allison Mooney

38. Ms Mooney is a Member of the Institute of Residential Property Management and an Associate Member of the RICS. She is a Director of Westbury Residential Ltd and has several other appointments from Tribunals as manager under Pt. IV of the Act.

39. Ms Mooney relied on a statement of case dated 15 May 2020 and gave remote evidence to the Tribunal. She adopted her report to the Tribunal dated 25 September 2019 and her statement of case dated 15 May 2020.

40. As far as works were concerned, Ms Mooney's evidence was as follows:
    (a) There had been legacy issues with "cowboy" plumbing work carried out over the years by Mr Stainer which had caused a series of leaks into the flats and a number of insurance claims.
    (b) The surface of the driveway was potholed and needed repairs. It was resurfaced in September 2019 at a cost of £5,000. The Manager had not seen any evidence this caused water penetration to the storeroom below.
    (c) After repeated failures of the south lift and clear evidence of poor maintenance, the Manager had replaced the contractors and upgraded the electronics at a cost of £15,000.
    (d) Following the service of fire enforcement notices in August 2017, the Manager had replaced the previous consultant (who had been reporting directly to Mr Stainer). As a result, savings of £70,000 were found in the original budget of £175,000. Work to provide a protected route in the north wing had been carried out with further work to the south wing scheduled. The removal of doors had led to disputes with the freeholder and Mr Stainer involving the police.
    (e) The western façade project would be deferred until she recovered the £300,000 outstanding.

(f) Ms Mooney estimated the revised cost of the project was now £1.2m including VAT, "based on a detailed survey and tender process".

(g) A timber fascia panel was torn off the fifth floor by high winds in November 2019. Weather conditions meant repairs using a cherry picker or scaffolding could not be carried out until Spring 2020, by which time the Covid-19 pandemic ruled out further progress.

41. Ms Mooney stated that the Applicants did their best to hinder progress. For example, there was an application to the County Court for an injunction to restrain the fire safety works to the ground floor. There was a complaint to the RICS about her, the service charge accountants were reported to their professional body, her solicitors were reported to the SRA and there were complaints about data breaches. All this took up considerable time and effort. But even if she had been flushed with cash, works of this nature took time.

42. At the hearing, Ms Mooney repeated that she considered the previous survey carried out in 2017 was probably out of date, and one could "safely" add another £200,000 to the £1 bill for the Western façade works alone. She had also recently carried out repairs to the area above Mr Bispham's flat, and this work was complete apart from making good to the interior. Another project was that the scaffold above the main atrium (which had been in place for many years) was to be removed. She was upgrading the fire alarm system. Gutter clearance had been carried out 2-3 weeks previously. There was severe backlog of plumbing works, with problems caused by inadequate falls. They were proceeding with the installation of a Paxton keyfob security system, although Mr Stainer had (unsuccessfully) applied to the County Court for an injunction to stop this. At this stage, there was £20,000 in the service charge account, of which £15,000 was pre-allocated. In September 2020, another £50,000 in receipts was anticipated. A recent estimate of the total cost of all external works, repairs and redecoration of the building was in the region of £4m, if these works were all done at once.

43. Ms Mooney also gave evidence about the extensive efforts to recover money from the First and Second Applicants including insolvency and bankruptcy proceedings.

44. Much of the cross-examination of Ms Mooney concerned her obligation to act fairly and impartially. She accepted she employed Mr Cobrin as a local agent and that she had paid him in the region of £1,000 a month since the onset of the Covid-19 pandemic. The suggestion for this had come for the committee of the Second Respondents. She was taken to para 135 of the decision of 5 July 2018 where she had told the earlier Tribunal she "would take personal responsibility for the management of the Grand and would not be delegating duties to her staff". Ms Mooney replied that had she not been distracted by litigation and complaints to the RICS etc., she would

not have needed to employ a local agent. Mr Cobrin was her "eyes and ears on the ground" and he was the right person because of his longstanding experience of the property. Ms Mooney was taken to the exchange of emails about the Shepwayvox.org website in early 2020. This was not her article, and she could not say who provided the information to the website. The Manager had shared the figure of £4m with the Second Respondents' committee. If Mr Cobrin had given the information to the website when he was acting as her local agent, she would have been "absolutely furious". Ms Mooney accepted she had not taken any disciplinary measures against Mr Cobrin, because she had no proof he had done anything wrong. She did not know who published Shepwayvox.org and had better things to do than investigating an anonymous website and "trying to lock the stable door after the horse had bolted". Ms Mooney was also asked about the appointment of a representative to the Leas Residents Association. She accepted she had stated in an email to the Chair of the group on 7 January 2019 that "it would be unfortunate for [it] to encounter negative publicity on an issue that should be a 'no brainer' for anyone of genuine standing in the town". But she did not accept this was a threatening email, or that she had later copied it into a wide range of recipients, including the local MP.

45. In cross-examination, Ms Mooney was also asked about various specific elements of repairs and major works. In particular, one of the photographs exhibited to Mr Stainer's statement showed obvious water ingress to the ceilings of one apartment. Ms Mooney stated this was caused by an overflowing boiler or immersion in the commercial parts, which she believed had already been repaired (or was awaiting repair). Other photographs showed a gap between fire doors, which remained defective. As far as the report to the Tribunal was concerned:

(a) Ms Mooney denied it was "bunkum" that the 'legacy' issues with plumbing were down to Mr Stainer.
(b) She accepted that when she was appointed in 2018, fire safety was a 'key' issue. Breach of fire safety notices was a criminal offence. Had she had funding, and had the Covid-19 pandemic not occurred, she would have complied with the notices. This was the reason she had approached the fire authority for an extension to the time for compliance.
(c) There was simply no money available for external painting.
(d) The tie bars to the southern elevation could not be replaced without scaffolding. They were also part of a much wider package of works to that elevation.
(e) As to the total cost of works, the £4m estimate was not a rough and ready one. It was a genuine estimate.
(f) In broad terms, one third of the liability for these costs was down to the Stainer leasehold apartments, and 25% down to the freeholder. She denied it was a question of proper budgeting. Neither the Stainers nor Hallam Estates had paid a penny.

Mr Peter Cobrin

46. Mr Cobrin is the joint registered proprietor of the Chilham Suite and Chair of the Second Respondents. Mr Cobrin has played an active part in previous claims, including both the 2014 and 2018 Management Order proceedings, the recent application for directions and various other proceedings and appeals. Those proceedings range well beyond the confines of pure property matters, including an (apparently successful) defamation claim in the High Court against Mr Stainer (QB-2019-001828) and an (unsuccessful) private criminal prosecution of Mr Stainer in Canterbury Crown Court (T20190226).

47. Mr Cobrin relied on his statement of case dated 15 May 2020. His main evidence concerned issues of independence. His personal arrangement as local agent was fully within the Manager's powers and it was supported by the Second Respondents. All parties in the case "had been guilty of overstepping the mark in regards to social media".

48. In cross-examination, Mr Cobrin explained he had always provided a link with leaseholders, although this was not mentioned in the 2018 Management Order. In January 2020, other committee members from the Second Respondents suggested he should be paid for this. The committee put forward a sum of money, he recused himself from that decision and they then made the decision without him. It was suggested it was inappropriate to appoint him as agent because he had been involved in an "orchestrated campaign of hatred". Mr Cobrin responded that he "didn't do hatred". Mr Cobrin accepted he had shared content with the Shepwayvox.org website (and other media) in the past, but he had no other involvement and he did not leak details of the £4m to the website. He was also taken to a transcript of a judgment of HHJ James following the unsuccessful private prosecution which took place at Canterbury County Court on 7 October 2019. The judge made various adverse comments, including that Mr Cobrin was "neither detached nor independent". Mr Cobrin stated to counsel that he did not consider the private prosecution was a "vendetta" against Mr Stainer. He had been entitled to take some action against Mr Stainer, and indeed his other neighbours rallied round and helped pay the legal costs.

Other witnesses

49. The Respondents submitted witness statements from the lessees of some 23 other apartments. Although there was insufficient time for each of these to give oral evidence at the hearing, the Tribunal has read every one, and it is grateful for the time taken by each witness to prepare their statements. The Tribunal proposed (and counsel agreed) that these witness statements would be treated as indicating the 23 lessees' general support for the retention of the Manager.

Evidence: conclusions

50. Notwithstanding this was a remote hearing, the Tribunal is satisfied it was able to make a proper assessment of the evidence of the witnesses, and the parties were able fully to participate in the proceedings. The

Tribunal considers it could deal with the remote and written evidence fairly and justly.

51. There was very little dispute about the principal facts in this application. What has or has not been done about repairs and maintenance is common ground. On most issues, there is no question about what the Manager has done or what she has communicated with the various parties. The main differences between the parties largely concern how those facts are to be interpreted, and each of the witnesses added a great deal of 'colour' and commentary to their evidence. Save for the questions of fact dealt with below, the Tribunal accepts the evidence of fact given by each of the witnesses.

The Applicants' case

52. In his closing submissions, counsel argued it was just and convenient to replace the Manager because she had failed to follow the directions in the 2018 Management Order, and she had managed the premises "incompetently".

53. Counsel's main ground concerned independence, which was covered by para 19 of the 2018 Management Order. He referred to the core principles set out in para 2.2 of the RICS Code (3rd ed.), which included the following obligations:

> "4 To do the utmost to avoid conflicts of interest and, where they do arise, to deal with them openly, fairly and promptly.
> 5 Not to discriminate unfairly in any dealings."

Although a manager was entitled to take a robust approach, the Manager had "comfortably crossed the line" between robustness and partiality. He accepted a manager should only be removed as a last resort, but the question of integrity was so important it was a "compelling ground" for discharge. The First Respondent's response to issues of conflict showed why she should be replaced. Even when questioned whether it was appropriate to employ Mr Cobrin as a local agent, although the Manager had been very defensive about the issue. This showed she was likely to repeat similar errors of judgment and her appointment was "tainted". As evidence of lack of independence, counsel relied on the email exchange with Mr Daggett in February 2020 about the Shepwayvox.org website article. Something had gone wrong, namely that Mr Cobrin had given information about costings to the website "under [the Manager's] watch", but the Manager had not taken any action. Effectively she told Mr Daggett he should make his own mind up whether the information had been leaked. Counsel also relied on the exchange of emails regarding membership of the Leas Residents Association, which further demonstrated a lack of independence.

54. Secondly, Mr Qureshi contended that communication was a key part of the management process. The 2018 Management Order specifically dealt with communication at paras 44-51. Mr Qureshi limited his argument to the contention that (when combined with the failure to

maintain set out below), the Manager had failed properly to particularise service charges or budgets and/or to communicate the nature of the works properly. In this respect, Mr Qureshi's skeleton argument referred to the report to the Tribunal dated 25 September 2019, which gave details of the proposed works which were under way and which had been completed. The complaint was essentially that the contents of the report given to the Tribunal ought also to have been provided to the lessees. And when matters were communicated to lessees (such as the questionnaire submitted by Mr Bispham in April 2019) these had not been replied to properly.

55. Finally, Mr Qureshi identified the following repairs and maintenance which had not been carried out in accordance with the 2018 Management Order:

(a) The painting of the exterior had not been carried out.
(b) There was no associated waterproofing. In particular, the Applicants relied on the water penetration to the Marlow suite, as described by Mr Bispham.
(c) The failure to carry out fire safety works in time.
(d) A failure to get up to date surveyor's quotations for major works.
(e) Scheduling of works. The priority should have been the tie bars and fire safety works.
(f) Works which were carried out, were carried out in a defective manner - particularly the damage to the roof of the kitchen storeroom referred to by Mr Stainer.

Mr Qureshi also relied on the evidence of Mr Daggett and Mr Foley about repairs and maintenance works, although he accepted their evidence overlapped with some of the above.

56. Counsel concluded by saying that in the event the Tribunal discharged the First Respondent and wished to replace her, the Tribunal would have to scrutinise and accept the replacement manager's plan for the premises.

The Respondents' case

57. Counsel gave six reasons for leaving the appointment in place:

(a) The First Respondent is in the process of winding up the freeholder. It is hoped this will generate sufficient money to enable management to proceed.
(b) A new manager would require time to learn what works were urgent. Precious time would be lost appointing someone new.
(c) Miss Mooney had already demonstrated to the Tribunal in 2018 that she had the ability to manage complex buildings. The Tribunal had accepted her plans for the building in 2018.
(d) The management order was due to expire in January 2021. The appropriate and proportionate time for ventilating questions of management was when any application for an extension of time was made.

(e) Any complaints about management could be dealt with by way of an application under s.27A Landlord and Tenant Act 1985: Chaun-Hui v K Group Holdings Inc [2019] UKUT 371 (LC); [2020] L.&T.R.5.
(f) Leaseholders generally supported the retention of the management order and supported the continuation of the First Respondent's appointment.

58. In closing, counsel submitted other relevant considerations included:
(a) The motivation of the Applicants, particularly Mr Stainer. He had no continuing legal interest in the leasehold apartments, having been made bankrupt. His only status was as a consultant to the First Applicant. Significantly, Mr Stainer was also responsible for many of the problems at the Grand, having failed to pay his way.
(b) The majority of lessees were broadly supportive of the Manager.

59. Addressing the issue of the Manager's obligations, para 19 of the 2018 Management Order involved both actual fairness and impartiality and the appearance of independence. There was simply no evidence at all to support the suggestion of actual partiality suggested by Mr Foley and supported by Mr Stainer. It required much more than an assertion. The basic reason works had not been done was lack of funds. As to the appearance of independence, the employment of a local agent was permitted by the 2018 Management Order and the incidents involving the Shepwayvox.org website and the Leas Residents Association did not affect this.

Discussion

Would relevant circumstances recur?

60. As far as s.24(9A)(a) is concerned, the circumstances which led to the 2014 and 2018 Management Orders are summarised in the Tribunal's reasons of 5 July 2018 at para 151. They were that the First Applicant had neglected its responsibilities to maintain the building for a significant period time and that it did not collect service charges and outstanding arrears. Dealing with each of these in turn:
(a) Ms Mooney described a programme of works in her report to the Tribunal of 25 September 2019, which she updated in her oral evidence to the Tribunal. The Tribunal's findings in relation to these are set out below. But for the purposes of s.29(9A)(a), the Tribunal is satisfied there would be some interruption to works. As counsel for the Applicants accepted, there will be a delay while the Tribunal scrutinises and accepts the replacement manager's plans for the building. This would inevitably mean that to a limited extent there would be some recurrence of the circumstances relating to the lack of maintenance which gave rise to the current management order.
(b) Ms Mooney also described the efforts made to collect money from the First and Second Applicants, including insolvency and bankruptcy proceedings. Once again, this process would be interrupted to a limited extent by a change of manager at such a late

stage, and lead to a recurrence of the circumstances relating to non-payment which gave rise to the current management order.

It follows that replacement of the Manager would not meet the first condition in s.24(9A)(a).

Is it just and convenient?

61. The focus of the application has been on the contention that it is just and convenient to replace the Manager under s.24(9A)(b) because of her failure to meet her obligations under the 2018 Management Order.

62. Impartiality. The Manager's obligation to act fairly and impartially is set out in Para 19 of the 2018 Management Order. But even if there was no such express obligation, unfairness and partiality would ordinarily be sufficient grounds for making an application for a variation. Para 2.2 of the RICS Code is a useful reminder of a Manager's obligation.

63. The Tribunal accepts the Respondents' submission that Para 19 covers both actual unfairness/partiality and the need to main the appearance perception of fairness/impartiality. It is useful to consider the allegations made under these two headings.

64. In terms of actual unfairness, the most significant allegation was made by Mr Foley in para (6) of his witness statement, supported by Mr Stainer's evidence in cross-examination. Mr Foley suggested the Manager made a deliberate decision to inflate the cost of maintenance in order (i) to facilitate Mr Cobrin's acquisition of the freehold of the Grand at a lower price and (ii) to fund this scheme at the cost of lessees. As a consequence, he suggests the Manager acted unfairly to some lessees, including himself. As Mr Foley says, if such a scheme existed, it would be a wholly "improper" alliance between the Manager and Mr Cobrin – not to mention being a clear breach of the 2018 Management Order and possibly a contempt of this Tribunal.

65. Unlike Mr Stainer, Mr Foley provided some limited evidential basis for the existence of the alleged scheme in para (5) of his witness statement. But the Tribunal rejects the existence of the alleged plan. First, the scheme would have involved serious professional misconduct and (as explained above) a cynical and deliberate breach of the 2018 Management Order on the part of the First Respondent. The Tribunal would expect clear evidence of that misconduct, but there was no evidence other than the bare statement from Mr Foley about the telephone call. Secondly, as far as that evidence is concerned, there is only Mr Foley's recollection of a telephone call which took place on an unspecified date some five months before the witness statement setting out the gist of the words used. That recollection was unsupported by any contemporaneous or near contemporaneous written evidence, and the details of the conversation is wholly unreliable. The Tribunal concludes that if the conversation ever took place, Mr Foley's

recollection is wholly unreliable. Thirdly, there is no evidence of any earlier complaint about what would have been a quite disgraceful and unlawful scheme. Some of the Applicants have shown their propensity to complain to courts, tribunals and professional bodies about a number of fairly minor management issues, and it is surprising there is no evidence of any earlier complaints about the scheme some months after Mr Foley allegedly became aware of it. Fourthly, the suggested plan is fanciful. Mr Cobrin has no immediate ability to acquire the freehold compulsorily, since the premises apparently do not qualify for either collective enfranchisement under the Leasehold Reform Housing and Urban Development Act 1993 or an acquisition order under the 1987 Act. Fifthly, there is no evidence that inflating the cost of repairs would have any significant impact on the value of the commercial parts. Sixthly, there was no explanation at all about the benefits Ms Mooney would expect to achieve from such a scheme, which would carry significant personal and professional risks. The benefits she would have expected would have to be very substantial indeed. Seventhly, there was a far more obvious and likely explanation for the additional cost of maintenance, namely that works had been delayed for some time due to lack of funds. Eighthly, there was no explanation about how the scheme could be achieved without the complicity of contractors and others to inflate the cost of works. Ninthly, the Tribunal is entitled to take into account the history of attempts to frustrate the operations of the Management Orders recorded by the Tribunal in its decisions of 5 July 2018 and 29 May 2020. Finally, the Tribunal rejects the suggestion the Manager discriminated against Mr Foley – whether in furtherance of the alleged scheme or otherwise. Like so many other allegations in this matter, this very serious allegation was made without any correspondence or any other evidence in support (or indeed any proper narrative). Distressing though a sewage leak may be, there are many reasons why a Manager may choose to provide 100% compensation water ingress. The Tribunal therefore finds on the facts that (i) the conversation never took place between Mr Foley and Mr Cobrin (or at least not in way Mr Foley alleges), (ii) there was no "plan" or "improper alliance" to acquire the freehold at a discounted price involving the Manager, and (iii) the Manager did not deal with Mr Foley less favourably than supporters of the alleged scheme. This contention can only be characterised a wholly baseless and unpleasant attack on the personal integrity of the Manager, which the Tribunal has no hesitation in rejecting.

66. As far as the appearance of fairness/impartiality is concerned, this largely concerns the employment of Mr Cobrin as "local agent" for the Manager. On this point, the Tribunal finds as a fact that Mr Cobrin was appointed as local agent before 5 February 2020, since Mr Daggett was aware of the appointment when he emailed the Manager about the Shepwayvox.org website article on that date. The Tribunal has considered everything the First Respondent had to say about Mr Cobrin's appointment. It is true that by early 2020, Mr Cobrin already acted as the Manager's 'eyes and ears' on the ground. He also had many years' experience of the details of management issues at the premises.

No doubt, it was unfair for him to do this without pay. Para 3(o) of the 2018 Management Order permitted the Manager to employ agents. But all this must be balanced against the simple point that any lessee would have an obvious potential conflict of interest when acting as the agent for the Manager. The appointment was also at odds with para 48, which directed the Manager to direct her to communications with the tenants through the Second Respondents. In effect, appointing an officer of the Second Respondents as local agent meant Mr Cobrin was required to communicate with himself. Moreover, there is substance to the objection that Mr Cobrin, who had been party to numerous proceedings in the tribunals and courts, was an obviously controversial choice of remunerated local agent. Although the Tribunal rejects the somewhat exaggerated attacks on Mr Cobrin by the Applicants, the Tribunal accepts his employment did affect the appearance of the Manager's impartiality and fairness.

67. As to the various other matters complained of, the Tribunal will deal with these relatively briefly:

(a) Mr Stainer referred to the hearing on 5 May 2020, where this tribunal refused an application by the Manager to be represented by Mr Cobrin. The application was refused for the reasons set out in para 22 of the Tribunal's decision of 29 May 2020. The matter was resolved by that decision and this Tribunal does not consider the application alone affects the appearance of the Manager's independence.

(b) The relationship between Mr Cobrin and the Shepwayvox.org website was the subject of lengthy cross-examination. It is a sad feature of modern life that disputes are often played out on social media, often in anonymous form. Mr Cobrin was at least realistic in acknowledging it was easy to "overstep the mark" on social media. The gist of the Applicants' case is that the Manager failed to take action in relation to the alleged leaking of confidential information by Mr Cobrin which appeared in the article published on 5 February 2020. On balance, the Tribunal accepts Mr Cobrin's denial he leaked the information to the website – largely because he was candid about his links to the website in the past. But more significantly, the Tribunal accepts the First Respondent's explanation for not investigating Mr Cobrin's role in the alleged leak. The website was anonymous, and Mr Daggett provided no evidence to link Mr Cobrin to the leak. The disputes at the Grand are characterised (as in this matter) by a blizzard of often highly personalised attacks on various individuals. The Manager's response that her time was better spent managing the property rather than investigating fairly trivial complaints of this nature is a perfectly reasonable one.

(c) There is then the issue about the Leas Residents Association. The Tribunal considers this issue is relatively insignificant. The Tribunal accepts the Manager had a legitimate interest in ensuring the premises were properly represented on outside bodies, although this aspect of management was relatively minor. The correspondence on the point almost immediately became couched in intemperate

terms, but the Manager's email of 7 January 2019 cannot reasonably be understood as some kind of threat.

68. Communication. The functions of the Manager relating to communications are set out in paras 44-52 of the 2018 Management Order and appear in the appendix to this decision. In particular, there is a limited obligation to provide bulletins and reports to tenants about "exceptional matters" such as major works: para 47. The primary means of communication is through the Second Respondents: para 48. The Manager must also hold quarterly surgeries: para 51.

69. The Tribunal does not find there has been any or any substantial breach of any of the obligations to communicate with lessees about repairs, maintenance, or major works. Mr Bispham refers to at least 3 meetings on site with residents, one of which is minuted. As to Mr Daggett, he refers to 5 letters circulated to lessees over a period of just over 6 months, a 4-page response to a detailed set of questions in April 2019 and at least one further email in January 2020. This was, of course, in addition to the main means of communication with tenants in para 48 of the 2018 Management Order. The only possible default appears to be lack of quarterly surgeries, although there were three meetings with residents on site between December 2018 and June 2019. If these meetings cannot be characterised as "surgeries", the failure to hold surgeries is not in the Tribunal's view a significant default.

70. Repairs and Maintenance. The functions of the Manager relevant to Repairs and Maintenance and Major Works are set out in paras 35-41 of the 2018 Management Order and appear in the appendix to this decision. The Tribunal will deal with each of these matters in turn.

71. As far as the exterior painting programme is concerned, the obligation is covered by routine repairs at paras 35-39 of the 2018 Management Order. The First Respondent's answer is that there is simply no money available for re-painting. The evidence of the Manager is that in cash terms, there is currently £5,000 in the service charge accounts to meet a potential liability of at least £1.2m for the western façade works, and other costs associated with fire safety etc. The Tribunal finds that the fundamental reason repainting has not been carried out (as in 2014 and 2018), is that the freeholder and the lessees of the flats associated with the Second Respondents have declined to pay any share of the costs of maintaining the premises. Mr Stainer's evidence on the point did not suggest the First or Second Respondents would pay anything at all in the foreseeable future, let alone a significant share of these costs. In such circumstances, it is wholly unrealistic to expect any Manager would undertake a repainting programme under the 2018 Management Order.

72. It was also said there was no "associated waterproofing". This also appears to be an alleged breach of the obligations in paras 35-39 of the 2018 Management Order. No details were provided, other than the

single incident of water penetration to the Marlow suite, as described by Mr Bispham. Although no details were provided, works to remedy this roof leak were apparently deferred until the Spring and then again delayed by the Covid-19 pandemic. These do not seem unreasonable explanations for a 6-month delay to works at high level in a location exposed to the sea. In any event, this is the kind of routine repairing issue which arises from time to time with management of a block of flats and any delay is not in itself a significant basis for varying the Management Order.

73. The most pressing issue appears to be fire safety works, where the obligation in para 41 of the 2018 Management Order is to comply with the requirements of the Fire Safety Officer and current fire safety regulations. The Manager's revised estimate for these works is in the order of £100,000. The Tribunal was not shown copies of any fire enforcement notices, but it appears they were given in August 2017 before the First Respondent's appointment. Since the Manager has obtained an extension of time to comply with such notices, in this respect there has been compliance with the strict requirements of para 41. But in any event, there is no dispute some fire safety works have been carried out. As far as the remaining works are concerned, the Tribunal accepts the explanation given by the Manager that the main reasons they have not been completed is (i) insufficient sums in the service charge account to pay for them due to non-payment of contributions by the First and/or Second Applicants and (ii) obstruction of the ground floor works by the First and/or Second Applicants (iii) the Covid-19 pandemic. In short, the Tribunal rejects the substance of the complaints about fire safety works.

74. The obligation in respect of major works at para 40 of the 2018 Management Order is to arrange and supervise works, including the preparation of a specification of works, the obtaining of competitive tenders, the service of any relevant notices on the tenants and supervision of works. The most significant of the major works involve the western façade, which at the time of the 2018 Management Order was estimated to cost approx.£1m, but which the First Respondent now estimates will cost £1.2m to put right. Although the Tribunal was not shown copies, there is no dispute historic specifications and tenders exist, and that s.20 notices have been sent to lessees. Given the delay with this project, the Tribunal accepts that further specifications, tenders and/or s.20 notices are now necessary. But the main explanation given is again one of lack of funding – and this is even more valid for works of £1.2m than it is for the repainting programme. No reasonable manager would embark on £1.2m of works with only £5,000 in the bank. In fact, the specific point made by counsel in closing was rather narrower, namely that the Manager had not obtained up to date surveyor's quotations for the major works. The Manager's evidence is that she has obtained "a detailed survey and tender process" to arrive at her revised figure of £1.2m for the western façade works, although no copies were produced. But even if this is wrong, any failure

to re-tender must be read in the light of the fact there is no immediate prospect of carrying out the works.

75. As to scheduling, this really goes to the reason for any default, rather than the default itself. The argument was that certain works could have been carried out with available resources. Three points can be made about this. First, the evidence of the Manager is that several items were attended to as priorities quite apart from fire safety works and the tie bars: see para 40 above. Secondly, fire safety works were being carried out, with the evident intention of completing them - and the reasons for not completing the works earlier are dealt with above. Thirdly, there was simply no evidence such items as the replacement of tie bars could be achieved at modest cost. Ms Mooney's professional opinion was that the tie bars would have to be dealt with as part of more general works to the southern elevation, involving scaffolding. There was no expert report from a structural engineer to say otherwise, or evidence from a quantity surveyor which costed an alternative scheme of works.

76. As to the works which have in fact been carried out, the only detailed complaint relates to the damage to the roof of the kitchen storeroom referred to by Mr Stainer. The Manager simply refutes the suggestion the works caused any damage to the roof of the storeroom beneath. The Tribunal prefers the evidence of Ms Mooney, who is a surveyor, to the evidence of the Applicants, who have not produced even the most elementary evidence the works damaged the storeroom roof. In any event, this is the kind of routine repairing issue which arises from time to time with management of a block of flats and any leak would not in itself be a significant ground for varying the 2018 Management Order.

77. Finally, there is the evidence of Mr Daggett, Mr Foley and Mr Bispham about works. There was a general complaint that moneys collected for service charges intended for the west façade were applied to other expenditure. There are several answers to this. Not least is that it is a misunderstanding of the way that service charges generally work. It is unusual for service charges paid by a lessee to be hypothecated to any particular element of the landlord's relevant costs or for them to be subject to a separate trust. Even if a service charge demand follows a s.20 consultation about major works, that does not generally mean a landlord must apply the proceeds of a subsequent service charge demand to the major works. In any event, the First Respondent's evidence is she has returned (or is intending to return) a significant element of the money paid in advance to the leaseholders. Moreover, although Mr Stainer suggests the contributions by lessees were spent on other things, Mr Bispham concedes they were largely applied to fire safety and other "urgent" works. Finally, as Mr Madge-Wyld submitted, any issues about the payability of service charges can be dealt with under s.27A Landlord and Tenant Act 1985 without disturbing the Management Order.

78. Other considerations. Whether it is just and convenient to vary the order also depends on other considerations.

79. One relevant factor is that the Manager enjoys the confidence and support of many residential leaseholders. During the course of argument, it was suggested the First Respondent was supported by 24 leaseholders, who were "the overwhelming majority". This assertion is correct if one counts the number of proprietors, but if one counts the number of apartments, they are in a minority of the 64 in the premises. Be that as it may, it is clear the Manager is supported by a significant body of residential lessees, which is a relevant consideration. It is also relevant these leaseholders were prepared to give evidence to this Tribunal to support the Manager – even though (apart from Mr Cobrin), they were not able to do so in the same way as Mr Foley, Mr Bispham and Mr Daggett. It is also significant that the Second Respondents support the Manager, even if some of its members disagree with the stance taken by its committee.

80. There is also the conduct of the First and Second Applicants. One of the two reasons given for the 2014 and 2018 Management Orders was to deal with the problem of obstruction by Mr Stainer and the freeholder and their unwillingness to pay anything at all towards the management of the premises. Mr Stainer was cross-examined at some length on this, and it was clear that neither the First nor the Second Applicant will willingly contribute anything at all to maintenance of the Grand. Apart from the lack of any financial contribution, the First and Second Applicants have shown they will frustrate the Manager by seizing every opportunity of legal proceedings available. They unsuccessfully applied for permission to appeal the 2018 Management Order, renewed that application to the Upper Tribunal and then made an unsuccessful application for judicial review of that decision (which was dismissed as being totally without merit). There was apparently a similarly unsuccessful application for permission to appeal at least one finding of liability to pay service charges under s.27A Landlord and Tenant Act 1985. The First and Second Applicants opposed the Manager's application for directions, relying (in part) on evidence that was found to be wholly unsatisfactory: see para 60 of the decision of 29 May 2020. The Manager also referred to an application to the County Court for an injunction to restrain fire safety works to the ground floor, a complaint about her to the RICS, a complaint about the service charge accountants to the ACCA, a reference of solicitors to the SRA and complaints about data breaches. The present application must be viewed in the context of what can only be described as a sustained campaign aimed at subverting the orders of this Tribunal made in 2014 and 2018.

81. Thirdly, although the allegations of default at various times have been very wide-ranging indeed, they have (in the end) narrowed to fairly limited grounds. There is no complaint that the basic elements of management have ceased. It is not part of the Applicants' case that the premises are not being insured, cleaned or lit, that gardening or other

services are not provided, that service charges are not demanded or that accounts were not produced. The Manager has carried out works and chased defaulters for payment. She has therefore fulfilled her main obligations under the 2018 Management Order.

82. Fourthly, the Tribunal takes into account the manner in which the application has been pursued. In particular, the "improper alliance" suggested by certain Applicants.

83. Fifthly, this is effectively an attempt to relitigate the 2014 and 2018 Management Orders, something which is wholly impermissible.

84. Conclusions. Taking all the above matters into account, the Tribunal does not consider it would be just and convenient under s.24(9A)(b) to remove the First Respondent as the Tribunal-appointed manager. Although criticism can be made about Mr Cobrin's employment as local agent, there was no actual partiality. The alleged problems with repairs and maintenance are largely down to lack of funding. There is no evidence of poor communications. The First Respondent has a significant level of support amongst leaseholders and changing manager would be a retrograde step at this late stage in her appointment. The First Respondent has been able to manage the premises in accordance with the 2018 Management Order, despite a sustained campaign by certain Applicants to frustrate its implementation.

Should a variation be made?

85. Section 24(9) itself gives the Tribunal a wide discretion whether to make a variation. The Tribunal accepts it should only make a variation removing a manager in exceptional circumstances, and the provisions should not be used as a cover to undermine or subvert the original management order. In practice, the considerations under s.24(9) will largely overlap with those in s.24(9A), and it follows the Tribunal declines to discharge the First Respondent as manager under the 2018 Management Order.

86. The one finding which tends to support the application to discharge is the finding at para 66 above that the appointment of Mr Cobrin as local agent compromised the appearance of the Manager's impartiality and fairness. But the Tribunal does not consider it would be fair and convenient to discharge the First Respondent on this basis alone. The risk of apparent partiality may be more fairly and conveniently dealt with by directions to the effect that the power to appoint an agent in para 3(o) of the 2018 Management Order should exclude any person with an interest in the premises (whether a lessee, freeholder or otherwise). Had there been an application for directions before this Tribunal under s.24(4) of the Act, the Tribunal would have been minded to give directions to that effect. But since the only application before the Tribunal is to vary under s.24(9), it will be necessary to give those directions by way of a variation. The Tribunal will invite the

parties to make written representations about the precise form of variation and make a decision about that when giving reasons for its decision. Those representations should be limited to the form of variation to para 3(o) of the 2018 Management Order and any other consequential directions.

87. For the avoidance of doubt, under s.24(9A) of the Act, such a variation to the 2018 Management Order is unlikely to lead to a recurrence of the mischief behind the order, and it would be just and convenient to amend it in this way.

Judge Mark Loveday
11 August 2020

FURTHER DECISION: FORM OF ORDER

1. In accordance with the Directions given to the parties, the Tribunal has received submissions from counsel for the First Respondent dated 15 July 2020, and he has indicated a form of directions has been agreed with the Applicants' counsel.

2. The first proposal is that para 48 of the 2018 Management Order should read:

> "*Communication with the Tenants is via the Recognised Tenants Association, Association of the Residents in the Grand or, where a Tenant is not a member of the Recognised Tenants Association, with the Tenant personally. If any Tenant who is a member of the Recognised Tenants Association wishes to be communicated with directly, the Tenant must inform the Manager. The Manager is to bring this clause to the attention of the Tenants.*"

3. The Tribunal agrees this is a sensible variation which is an indirect consequence of its findings. It therefore gives directions to that this variation should be made.

4. The substantive proposal is to amend para 3(o) of the 2018 Management Order to enable Mr Cobrin to remain as a local agent of the First Respondent. Notwithstanding the parties appear to have agreed this, the Tribunal does not accept the suggestion. The Tribunal made its decision following the hearing on 1 July 2020 on the basis of the evidence and submissions made at the time. It clearly indicated it wished to give directions to vary the Management Order to exclude the possibility of a tenant being the local agent of the Tribunal-appointed manager. The purpose of allowing submissions was to give effect to the decision made, not to challenge or vary it - and it is not open to the parties to do this by agreement. The Tribunal therefore regrets it must reject the agreed form of variation.

5. The Tribunal has formulated its further directions by adding the following words to para 3(o) of the 2018 Management Order: "For the avoidance of doubt, that servant or agent may not be a tenant or any other person or body with an interest in the property".

6. There may of course be other means of ensuring Mr Cobrin remains a local point of contact under para 48 of the 2018 Management Order (or indeed remunerating him for his work) other than by the Manager employing him as her local agent. Such other arrangements are not a matter for this Tribunal.

Judge Mark Loveday

11 August 2020

APPENDIX

Extract from 2018 Management Order

Directions

…

The Manager

19. The Manager shall act fairly and impartially in her dealings in respect of residential part of the property.

…

Repairs and Maintenance

…

35 Deal with all reasonable enquiries raised by the Tenants in relation to repair and maintenance work, and instruct contractors to attend and rectify problems as necessary.

36 Administer contracts entered into on behalf of the Tenants in respect of the Residential Part of the Property and check demands for payment for goods, services, plant and equipment supplied in relation to such contracts.

37 Manage the Common Parts, and service areas of the Residential Part of the Property, including the arrangement and supervision of maintenance.

38 Carry out regular inspections (at the Manager's discretion but not less than four per year) without use of equipment, to such of the Common Parts of the Residential Part of the Property as can be inspected safely and without undue difficulty to ascertain for the purpose of day-to-day management only the general condition of those Common Parts.

39 Establish a planned maintenance programme for the Residential Part of the Property and to be circulated to the Tenants and the Landlord.

Major Works

40 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 where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on the Tenants and supervise the works in question.

41 In particular to ensure as soon as practicable that the Property in conjunction with the Landlord complies with the requirements of the Fire Safety Officer for the local Fire Service and current Fire Safety Regulations."

....

Administration and Communication

44 Deal promptly with all reasonable enquiries raised by the Tenants including routine management enquiries from the Tenants or their representatives and the Landlord.

45 Provide the Tenants and the Landlord with telephone, fax, postal and email contact details (including emergency contact details) and complaints procedure.

46 Keep records regarding details of Tenants, agreements entered into by the Manager in relation to the Premises and any changes in Lessees.

47 Provide bulletins and other reports to the Tenants and Landlord on exceptional matters such as major works, emergency works, legal disputes and

48 Communication with the Tenants is via the Recognised Tenants Association, Association of the Residents in the Grand. If any Tenant wishes to be communicated with directly, the Tenant must inform the Manager. The Manager is to bring to this clause in the first instance to the attention of all Tenants.

49 The Manager will maintain a Notice Board in the Common Parts of the Residential Area where all Notices and Communications affecting the Tenants including a Copy of this Order are to be affixed.

50 The Manager shall during the first six months visit the Property at least once every fortnight and thereafter at least once every month.

51. The Manager shall hold quarterly surgeries at the Property.

52 To attend meetings of Tenants if requested and the request is reasonable.

Appeals

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.