



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

**Case Reference** : **CHI/43UK/LVM/2019/0010**

**Property** : **Castle Place, Castle Square,  
Bletchingly, Redhill  
Surrey, RH1 4LB**

**Applicant** : **William Sheldon and Others**

**Representative** : **William Sheldon**

**Respondent** : **(1) Castle Place Bletchingly  
Freehold Ltd  
(2) Stephen Pamerter  
(3) Rachel McHugh**

**Representative** : **(1) no representation  
(2) Stephen Pamerter  
(3) no representation**

**Manager:** : **Gary Pickard**

**Representative** : **Seb Oram, Counsel**

**Type of Application** : **Appointment of a Manager**

**Tribunal Members** : **Judge D Dovar  
Mr K Ridgeway**

**Date and venue of  
Hearing** : **26<sup>th</sup> February 2020 (Crawley)  
7<sup>th</sup> July 2020 (remote)**

**Date of Decision** : **14<sup>th</sup> July 2020**

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**DECISION AND ORDER**

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1. This is an application to extend the appointment of a manager, Gary Pickard, under s.24 of the Landlord and Tenant Act 1987. The appointment by way of Management Order had been made by the Tribunal on 26<sup>th</sup> October 2016 for a period of 3 years. That Management Order was varied by the Tribunal on 25<sup>th</sup> May 2017 in order to facilitate the raising of ad hoc interim demands and then quarterly demands on account.
2. This application was made on 13<sup>th</sup> August 2019, before the Order expired, and it has been extended on an interim basis pending this decision.
3. The First Respondent has played no role. The Third Respondent having filed submissions in opposition and attending the first day of hearing, withdrew her objection prior to the resumption of the hearing on 7<sup>th</sup> July. The Second Respondent, Mr Pamenter remained throughout in opposition to the continued appointment of Gary Pickard and proposed his own manager in his stead, Mrs Robertson.
4. It was not in dispute that the Order should be extended, however, the identity of the manager was a contested matter and there was some, albeit relatively minor, disagreement over proposed amendments to the Management Order.
5. Given the nature of the allegations made by Mr Pamenter, who was liberal with his allegations of corrupt and fraudulent conduct, Mr

Pickard was independently represented with the permission of the Tribunal.

6. A description of the property is contained in the decision of 26<sup>th</sup> October 2016. Of note and continuing relevance is the siting of the communal boiler room outside the building and within a different title number. The Tribunal inspected the internal as well as the external parts of the building on the morning of the first hearing on 26<sup>th</sup> February 2020.

### **Objections to Mr Pickard**

7. Mr Pamenter raised a number of issues with Mr Pickard's appointment from which he sought to persuade the Tribunal that his appointment should not be continued. An unfortunate irony is that it was Mr Pamenter who had been instrumental in having Mr Pickard appointed in the first place, as he had brought the original application in 2016. It is also notable that by the time of the second hearing on this matter, only Mr Pamenter opposed Mr Pickard's continued appointment.
8. Mr Pickard, in accordance with the Management Order has provided three reports to the Tribunal on this activity with the Property and they have been taken into account.

### *Apportionment*

9. The first issue raised by Mr Pamenter was Mr Pickard's approach to the apportionment of the service charge costs. This was an issue that had been highlighted in the decision of 26<sup>th</sup> October 2016, where the Tribunal noted at paragraph 17 a number of ambiguities in relation to

apportionment. They recommended that legal advice was obtained to correct these problems.

10. The problems appear to be firstly that it was not clear that costs were recoverable for the heating and hot water which were contained in a separate building and if so on what basis they should be apportioned. Secondly, the leases differed in their apportionment. All provided for it to be on the basis of a 'fair contribution', save for Flat 1, which started with that basis, but went onto say that the default basis would be relative area. It is notable that Flat 1 was the last unit to be demised and therefore is of limited value in determining the basis of apportionment for the other flats.
11. Mr Pamerter did not consider that there was any issue with apportionment and that the original Tribunal had been misled because they had only been shown one lease, of Flat 1, which was different from the others. Had they seen the other leases, then they would have realised that this was not a problem. The Tribunal was a little puzzled at Mr Pamerter's approach given that he had made the original application, and had been involved in which lease to put before the Tribunal. He therefore should bear some responsibility for any shortcomings, if there were any, in the Tribunal's approach.
12. Rather than take up the Tribunal's recommendation to seek legal advice, when Mr Pickard commenced management, he carried out a re-assessment of the relative size of each apartment. Mr Pamerter contended that this was an unnecessary step to take and that the

measurements were all known and had been used historically to apportion the service charge. Further, Mr Pamenter took issue with the measurements in that: only gross internal areas were measured, rather than net internal as well; and no proper account was taken for the fact that his apartment had roof space.

13. He also took issue with a report commissioned by Mr Pickard into the provision of heating and hot water. Firstly, he queried the address of the author – it was on a big industrial estate and he doubted correspondence would get to him; this gives some indication of the level of criticism that Mr Pamenter was prepared to descend. Secondly, he thought the figures for replacement works were artificially high in order to put off works being done. Bizarrely, despite those reservations which he asserted with some force, he did agree with the conclusion that the current apportionment of the cost of heating, on a 1/6<sup>th</sup> basis, was unfair and that it needed monitoring.
14. In response to these points, Mr Pickard stated that it was obvious from the 2016 determination, that the apportionment terms were unsatisfactory and in the absence of either the landlord or tenants making an application to the Tribunal to fix this problem, he wanted to provide a provisional basis for apportioning costs. He indicated to the lessees that this was to form the provisional basis of his charging regime, and it was up to them to apply to the Tribunal if they wanted to take a different approach. It was to that end that he commissioned the report and survey. This dealt with both the issue of using area as a basis for apportionment and the manner in which the costs of the boiler room and

for the supply of heating and hot water were charged. He was also sceptical about the initial measurements that had been used as he believed they had been based on sales particulars, rather than an accurate survey.

15. Having received the report and survey, his first demand made it clear that it was provisional.
16. Relative area is a potentially fair basis for determining apportionment. This is an approach that is consistent with the prescription in all the leases that they are apportioned on a fair basis and there is no precise method stipulated as to the method of measurement to be used, nor does it fall foul of any professional guidelines. Therefore Mr Pamerter's criticism as to the method of measurement has little merit. Further, given that in respect of supply of heating and hot water, there may be significant variations between leaseholders in demand, for that service it was reasonable to consider an apportionment not based on area. However, the cost of installing the equipment to enable apportionment by usage, was itself expensive. There is nothing to suggest, as Mr Pamerter contends, that the assessment of the cost of the additional equipment has been artificially inflated.
17. Issues over apportionment were raised by the Tribunal in 2016 which Mr Pickard sought to deal with under his appointment and the management order. The Tribunal considers that Mr Pickard's approach was a genuine, fair and practical attempt to deal with this issue. Therefore, the Tribunal does not consider that there was anything in Mr Pamerter's

challenge on this aspect to undermine confidence in his continuing as manager.

### *External Redecoration*

18. Mr Pamerter's next complaint related to major works that were carried out in around May 2018 for external redecorations. Firstly, he was concerned that from the conclusion of the consultation they did not start for a year. Then he said he was not given sufficient notice of their commencement. Secondly, he was not happy with the standard of work and asserted that the wrong primer had been used and a specification that had been agreed with him had not been followed. This resulted in the paint peeling off and primer coming through various coats of paint.
19. He also challenged the need for repointing, the repair to roof tiles and work to metal railings.
20. Attempts were made to remedy the issues with paintwork, in that Mr Pamerter did spend time with Mr Pickard and the contractors showing them where the problems were and what needed to be done. However, it seems that matters reached an impasse as Mr Pamerter wanted the works started from scratch. He understood that that had been agreed at a meeting in August 2018, but considered that later that had been reneged on. As a result he made a formal complaint to the Property Ombudsman who determined that there had been a breakdown in communication, in particular that Mr Pickard should have followed up that meeting in August with an email setting out what had been agreed. As a result Mr Pickard was directed to pay £400 compensation.

However, as for the failure to start from scratch, the Ombudsman considered that Mr Pickard could not be criticised in his course of action and noted that Mr Pamerter had refused access to the original contractor to carry out the remedial work.

21. In response, Mr Pickard said that time was taken to build up reserves for these works as prior to his appointment, there were none, and that there were further delays due to Mr Pamerter's input. In his first report to the Tribunal he also noted that there were arrears of service charge payments which needed to be chased.
22. As for the standard of work, recognising initial problems, he wanted to ensure that any remedial work was correct. However, he had deviated from the original specification at Mr Pamerter's request and so did not think he could be criticised for that. The meeting in August 2018, to address the issues, he said was an acrimonious meeting at which Mr Pamerter was enraged and began scraping at the paintwork with scissors. He said that at that time the work had not been finished and could not be finished as access was denied.
23. Given this dispute, he engaged a third party to assess what the issue was and how it could be resolved. As a result of that engagement, it was clear that some areas had failed and needed to be reworked, but not the entire job. However, Mr Pamerter wanted the whole work redone, not just parts. He therefore would not allow access, which is why the redecoration remains unfinished to date.



24. This is one area where Mr Pamenter was more directly impacted by the standard of work than the other leaseholders. Whilst there were issues with the standard, which the Tribunal noted on its inspection, Mr Pamenter, by refusing access to the original contractors and continued demand that the work be carried out from scratch, has impeded the rectification of the redecoration. Further, whilst they are the external parts to his flat, they fall within the First Respondent's repairing obligations and ultimately it was for them to decide how to carry out those works.
25. The Tribunal did not consider that the complaint over roof tiles, repointing and metal railings had any merit on the evidence provided.
26. Again these are not factors which leads the Tribunal to consider that Mr Pickard should be replaced.

*Damages to sewage treatment plant*

27. Mr Pamenter stated that the sewage treatment plant was not functioning as the controls and sensor relays had been removed. He also considered the absence of any smell, which had historically been noticeable, from the plant was evidence that it was not working. He had reported this to Mr Pickard, but complained that it had not been remedied.
28. Mr Pickard said he was addressing this issue. He had arranged for a report on the functioning of the plant. It had not been historically serviced, a matter that he addressed early on in his appointment. He had commissioned further reports to see if it was discharging into the

surrounding soil. He had recently heard back with confirmation that the new control panel that had been fitted was working and performing its task.

29. The Tribunal considers that this is an example of Mr Pickard seeking to resolve difficult issues with the Property and not an example of incompetence as Mr Pamenter portrays it.

*Statutory compliance*

30. Mr Pamenter complained that it took Mr Pickard 9 months from his appointment to have the fire alarm tested and even then there was no access to the emergency lights. Since then insufficient testing had been carried out. He also alleged that the fire testing log book had recently been tampered with by the contractor. He supplied Mr Pickard with evidence of tampering, and contended that this had been done in order to cover up the fact that they did not carry out the test.
31. Additionally, he asserted that Mr Pickard had failed to address issues raised in a health and safety report and had not properly cleaned or inspected the water tank.
32. Mr Pickard set out the steps he had taken with respect to the fire alarm. He had experienced difficulties with the original contractor who had apologised and given a refund. He had also provided Mr Pamenter's concerns to the contractor who had responded and as a result of that, he did not consider that further action needed to be taken. He did not accept that he not properly addressed the issues in the health and safety

report. The water tank was sealed and emptied about twice a day, therefore he did not consider it posed a risk and needed inspection more than it had been.

33. The Tribunal is satisfied with the steps taken by Mr Pickard which are sensible and proportionate to the matters in hand.

#### *Section 20 Consultation*

34. Mr Pamerter considered that two s.20 notices were corrupted and that two had caused damage to the building the sewage treatment system. He clarified that by corrupted, he meant that they had the wrong information on them. However, one had been withdrawn and the other related to the roof works which had not been carried out.

35. The Tribunal struggled to understand the real nature of Mr Pamerter's complaint in this aspect. His caustic language tended to obscure the issue he was driving at. In fact, the notices that he complained of had not been actioned. There is nothing in this complaint which leads the Tribunal to question the ability of Mr Pickard to carry out his functions.

#### *Service Charges / Legal position*

36. Mr Pamerter contended that Mr Pickard had not complied with the courts directions, the leases or the law when making his service charge demands and they were unenforceable. The Tribunal was unable to determine the particulars of this allegation from the evidence before it.

#### *Building Defects and Insurance Claims*

37. There is an ongoing insurance claim at the property arising from its development into six flats. The floors have moved creating issues with cracking and gaps with the skirting. A claim was submitted in November 2019 and continues to be progressed, albeit with significant resistance from the insurer to the majority of the claim.
38. Mr Pamerter complains about Mr Pickard's handling of this claim; including the time it has taken, the expense incurred, the frequency of surveys and inspections and the scope of what is being covered.
39. In addition Mr Pamerter is critical of the works done to the service trench for the heating and hot water supply. He considers that a trench was dug up unnecessarily to find a leak, but as none was found the insurance has not covered the cost of these works.
40. Mr Pickard responded to the insurance matter by stressing that this was a complex claim that had required the input of numerous experts and has been passed onto specialist claims consultants. Its value is around £500,000. In his first report to the Tribunal of 26<sup>th</sup> October 2017, he noted that he had taken over the claim and that it was likely to be lengthy time consuming and disruptive. He had by then received an interim report from a claims handler, LORGEA, which he had distributed to the leaseholders. By his second report of 26<sup>th</sup> October 2018 he set out how this claim had widened considerably given further defects and damage having been identified following an engineer's report. By his third report in 2019, he notified the Tribunal that he had finally submitted the claim;

albeit that it was knocked rather heavily back by the insurer. He was continuing to pursue the claim.

41. In respect of the water leak, he stated that that issue had yet to be settled.
42. The Tribunal is satisfied that Mr Pickard is correctly pursuing what is a complicated insurance claim and took the right steps to try and locate a water leak, even if it was ultimately inconclusive. Mr Pamerter does not appreciate the complexities of the issues that Mr Pickard is dealing with and, in respect of the insurance claim, the need to co-ordinate a number of experts to put forward the claim.

#### *Conclusion on Conduct issues*

43. As with all applications for an appointment of a manager, where the Tribunal goes onto make that appointment, that is indicative that there are serious problems with management of a property. This case was no exception and the decision in 2016 identified various problems that the incumbent manager would have to grapple with.
44. Further, in this application, it is notable, although not determinative, that only one leaseholder out of six, resists Mr Pickard's replacement. The issues raised by Mr Pamerter on the whole related to all the property, not just his flat. It is therefore of some significance that he was the only one who thought that Mr Pickard's performance was so poor that he should not continue, even though he accepted that the order

should be extended. Further, the application was made by three of the six leaseholders who all positively supported Mr Pickard.

45. With that background in mind, the Tribunal does not consider that any of the specific issues raised by Mr Pamerter are sufficient to warrant replacing the manager at this stage and that there is considerable force and merit in permitting Mr Pickard to continue to finish out what he has started.

### **Alternative Manager**

46. Mr Pamerter requested that Mrs Robertson replace Mr Pickard.
47. The Tribunal does not consider that Mrs Robertson should be substituted for Mr Pickard for a number of reasons. The predominant reason being that the Tribunal does not agree with Mr Pamerter that Mr Pickard should be replaced. Given that all the parties agree the order should continue, there is therefore a very strong rationale for keeping Mr Pickard, namely to allow him to carry on what he has started and to utilise the experience he has acquired since his appointment. The major concern the Tribunal had was Mr Pamerter's opposition and that he would not co operate in the future, but the Tribunal hope that given their decision, Mr Pamerter will seek to engage in a conciliatory and constructive manner with Mr Pickard.
48. The Tribunal were overall impressed with Mrs Robertson and her management experience, however, there was some concern at the fact that she had not looked at the leases, that her indemnity provision was

on the low side and that she had not assessed the insurance claim. The lack of a detailed management plan from her meant that it was hard to contemplate her as a potential successor.

### **Terms of the Order**

49. A few amendments were proposed to the current order, which were on the whole agreed.
50. The first related to the inclusion of the boiler shed within the order and the recovery of the costs of the same through the service charge. Mr Pamenter's objection to this was based on the fact that alternative, more permanent arrangements should be made to tie in the costs, rather than under a time limited management order. Whilst it may well be desirable for a permanent solution to be found, the Tribunal does not consider that that meant a temporary one could not be imposed under the order; the two were not mutually exclusive. Accordingly, the Tribunal amends the order to that extent.
51. The second related to the frequency of demands for interim service charges. The original order made in 2016 did not specify the timing of any interim demand, the inference was that it was left to the lease terms, which only allowed one demand a year. In 2017, Mr Pickard applied to vary the Order to allow him to serve ad hoc demands. The Tribunal acceded to that request, but only for a limited period. The concern was that to allow ad hoc demands unlimited in time could lead to unbudgeted and unexpected demands. As a result, the order was varied to allow for

ad hoc demands for a limited period and thereafter for quarterly demands.

52. Whilst all the parties sought ad hoc demands, the Tribunal considers that quarterly demands based on a budget is a more disciplined and predictable method of dealing with service charge recovery, which is reflected in the order.

### **Conclusion**

53. In light of the above, the Tribunal continues the Management Order, subject to the variations annexed to this decision, for a period of 3 years.

Judge D Dovar



## **ORDER**

1. The Management Order Dated 26<sup>th</sup> October 2016 (as varied on 25<sup>th</sup> May 2017), be extended for a further period of 3 years to 25<sup>th</sup> October 2022.
2. The following variations be made to the said Order:

- a. Paragraph 1 i of the recital to the Order is replaced with:

"The property" includes: (i) all those parts of the property known as Castle Place, Castle Square, Bletchingley, Redhill, Surrey RH1 4LB and registered at HM Land Registry under title number SY163401; and (ii) the boiler shed and land on which it is situate, registered at HM Land Registry under title number SY821700.

“The Building” means the building containing the individual flats held by the under-lessees.

- b. Paragraph 2 of the Order is replaced with:

The order shall continue from 26<sup>th</sup> October 2016 to 25<sup>th</sup> October 2022.

- c. Paragraph A 1.1 of the Schedule and Functions and Services is replaced with:

### A. SERVICE CHARGE

- 1.1 Prepare an annual service charge budget (setting out the anticipated expenditure as referred to in clause 4 (17)(a) of the under leases), administer the service charge and prepare and distribute appropriate service charge accounts to the lessees or under-lessees, the amount of such charges being calculated by reference to the proportion that the internal area of each tenant’s flat bears to that of the Building as a whole (to be determined by the manager by any fair and reasonable means).

1.2 The sum payable each year under clause 4(17)(a) of the underlease or lease on account of contributions anticipated as falling due under clause 4(17)(b) of each underlease or lease shall be payable in four quarterly instalments and demands shall be issued accordingly, with the first being made at the beginning of the accounting period. Such sums demanded by the manager shall be payable within 21 days of the date of the demand. The manager will comply with the statutory duties of the landlord in respect of all qualifying works and long term qualifying agreements.

## **Appeals**

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to the First-tier Tribunal at the Regional office which has been dealing with the case.

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.

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.

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.