



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

**Case reference** : **LON/00AG/LVM/2020/0011 V:CVP**

**Property** : **64, Fitzjohn Avenue, London, NW3 5LT**

**Applicant** : **Mr Martin Kingsley**

**Respondent** : **Dr Simon Gabbay (Landlord)**

**Interested Parties** : **(1) Mr L & Ms A Bloch (Flat A)**  
**(2) Miss E Casdagli (Flat B)**  
**(3) Mr & Mrs M A Mirzai (Flat C)**  
**(4) Mrs S Oldroyd (Flat D)**  
**(5) Professor D Green (Flat E)**

**Type of Application** : **Variation of order for the appointment of a manager**

**Tribunal Members** : **Ms H C Bowers**  
**Judge N Carr**  
**Mr T Sennett MA FCIEH**

**Date of Decision** : **6 January 2021**

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**DECISION**

**The Tribunal appoints Mr Martin Kingsley as manager of 64, Fitzjohn Avenue, London, NW3 5LT, for a period of five years ending on 31 December 2025.**

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**REASONS**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:CVP. A face-to-face hearing was not held because it was not practicable, and no request was made for a face-to-face hearing. The documents that the Tribunal was referred to were in a bundle of 56 pages, with an amended page 53 and correspondence from each of the leaseholders of the five flats. All documents have been noted by the Tribunal.

The remote video hearing took place on 14 December 2020. In attendance were the Applicant, Mr Kingsley; the Respondent/landlord, Dr Gabbay and two of the leaseholders, Miss Casdagli and Mrs Oldroyd.

### **The Application**

1. The Applicant, Mr Martin Kingsley, made an application on 9 July 2020 and seeks a variation of an order appointing a manager under section 24(9) of the Landlord and Tenant Act 1987 (the “Act”) in respect of 64, Fitzjohn Avenue, London, NW3 5LT (“the Property”), which is a property comprising five flats.

### **The Background**

2. Mr Martin Kingsley is the present tribunal-appointed manager. He was originally the manager of the property from 2010 under a private arrangement with the landlord. However, following a Management Order (‘the Order’) dated 1 September 2014, Mr Kingsley was appointed for an initial term of three years. By a Tribunal decision dated 18 October 2017, the Order was extended for a further three years from 18 October 2017. Therefore, Mr Kingsley’s appointment would have expired on 17 October 2020, had it not been extended by an Interim Order, allowing Mr Kingsley to continue as manager, until this case was eventually determined.
3. In the decision dated 18 October 2017, Mr Kingsley’s annual management fee was set at £750 per flat, plus other fees to reflect additional tasks beyond the conventional management tasks. The decision noted that the annual management fee was higher than normal but reflected the difficulties in the management of the building. It also stated that once the difficulties had been resolved, then the manager may review the fees.
4. Prior to the hearing, the Tribunal sent to the parties a draft precedent management order. The parties were invited to consider this document as a substitution to the current Order.

### **The Hearing and the Parties’ submissions**

5. In attendance at the hearing were the Applicant, Mr Kingsley, the Respondent/landlord, Dr Gabbay and two of the leaseholders, Miss Casdagli and Mrs Oldroyd.
6. Mr Kingsley explained that the Order had been a success and that he had made progress in the management of the Property. He applied to extend the order for a further five years on similar terms. He explained that originally there had been a breakdown in the communications between the parties and that the Property had been neglected. He had organised major works and the issues relating to the service charges had

been resolved. It was explained that at the rear of the Property currently there was a major redevelopment scheme involving the re-building of the neighbouring property with a new building, comprising basement to 2<sup>nd</sup>/3<sup>rd</sup> floors. The scheme involved a party wall agreement, and, whilst some fees were payable by the agreement, his work in negotiating with the developer was within the scope of his annual management fee. He is active in protecting the position of the leaseholders of the Property and it is anticipated that the redevelopment would take another year or so. He considered that a five-year extension would allow some continuity and would avoid the need to re-apply to the Tribunal.

7. It was put to Mr Kingsley that the current thinking of the Tribunal was that any appointment would be for a specific purpose and that the duration of any order would be for the time necessary to complete a specific task. He confirmed that he had no plans to reduce his annual management fee and that if he was given a five-year extension, then his fee would be fixed for that time. He also confirmed that the fee was inclusive of VAT.
8. In respect of any proposed works, it was acknowledged that the major works in 2017 had been extensive. Whilst, Mr Kingsley did not have a planned maintenance programme, he did consider that during the next five years there would be a need to undertake some works both as routine to the exterior of the Property and as a consequence of the adjacent, re-development works.
9. In respect of the day-to-day management, Mr Kingsley confirmed that the regular management included maintenance of fire alarm systems, annual health and safety, cleaning, meter readings, inspections, insurance, and the ground rent and service charge collection and reconciliation.
10. Mr Kingsley acknowledged that he had received a copy of the precedent management order. It was a form of management order that he had previously seen and was not too dissimilar to other management orders by which he had other Tribunal appointments. He had no objection to the proposed management order being adopted in this case.
11. There were no written representations from Dr Gabbay. However, he indicated that he had no opposition to the extension of Mr Kingsley's appointment. He acknowledged that there had been historic problems in managing the property and that Mr Kingsley had addressed many of the issues.
12. Although not in attendance at the hearing, the Tribunal had received confirmation from Mr and Mrs Bloch, Mrs Mirzai and Professor Green that they supported Mr Kingsley's continued appointment as manager for a further five years, and that they would follow the Tribunal's 'advice' in relation to fees and any other matters. At the hearing, Ms Casdagli also confirmed her support for an extension for another five years. She considered that if the adjacent development would take another two

years then there should be sufficient time in the management order for the manager to deal with any outstanding problems.

13. Mrs Oldroyd explained that she supported Mr Kingsley's re-appointment. She would prefer a longer period of appointment to deal with outstanding problems and because the leaseholders were considering a longer-term solution with a Right to Manage application.
14. The adjacent redevelopment scheme could have a significant impact on the Property and Mrs Oldroyd thought it may be another two years before the scheme was completed. Mr Kingsley's role as a Tribunal appointed manager, gave him some credibility that was useful in his negotiations on the party wall agreement. He had demonstrated diplomacy in handling various matters. He had overseen the major works and had resolved the service charge disputes.
15. On the issue of increased transparency, Mrs Oldroyd stated that whilst she did not wish to see every invoice, she would like to see more detailed information on the service charges. Ideally, she would like a regular reconciliation with explicit detail about what expenditure was being incurred under the various service charge headings.
16. In response, Mr Kingsley agreed that he could easily provide the monthly service charge reconciliations to the leaseholders. Mrs Oldroyd commented that she would not require reconciliation on a monthly basis, and if the information was provided on a six-monthly basis that would be sufficient.

### **Tribunal's Deliberations and Decision:**

17. The Tribunal notes that the Respondent and all the leaseholders support the extension of Mr Kingsley's appointment for another five years. The Tribunal would comment that the appointment of a manager should be regarded as a temporary solution to address specific issues. However, given the level of support, that there are ongoing issues regarding a redevelopment that could impact on the Property, and that the leaseholders are exploring other solutions for the longer-term management of the Property, the Tribunal considers that it would be appropriate to vary the Order and extend Mr Kingsley's appointment for five years. His appointment will run to 31 December 2025, which will tie into the end of the relevant service charge year. As to the issue of fees, the Tribunal notes that the level of fee of £750.00 per unit is inclusive of VAT and is within a range that is reasonable for this type of property and for the scope of management to be undertaken.
18. Attached to this decision is a revised Management Order appointing Mr Kingsley. This order is in a form to take account of current practices. There was no general objection to the use of this revised Management Order. However, the parties should consider the Management Order in detail, as this provides the framework for Mr Kingsley's appointment.

**Name:** Helen Bowers

**Date:** 6 January 2021

### **Rights of appeal**

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

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

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

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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



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**Property** : **64, Fitzjohn Avenue, London, NW3 5LT**

**Applicant** : **Mr Martin Kingsley**

**Respondent** : **Dr Simon Gabbay (Landlord)**

**The Manager** : **Mr Martin Kingsley**

**Tribunal Members** : **Ms H C Bowers  
Judge N Carr  
Mr T Sennett MA FCIEH**

**Date of Order** : **6 January 2021**

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**MANAGEMENT ORDER**

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1. In accordance with section 24(9) of the Landlord and Tenant Act 1987 (“the Act”) Mr Martin Kingsley’s appointment as manager of 64, Fitzjohn Avenue, London, NW3 5LT (the Property) is extended and shall now end on 31 December 2025.
2. In this Management Order:
  - a. “The landlord” means Dr S Gabbay, or in the event of the vesting if the reversion of the residential leases of the Property in another, the landlord’s successors in title.
  - b. “The leases” means the residential leases in the Property, by which the lessees occupy their flats, which are understood to be in the same terms with regards to the service charge arrangements.
3. The purpose of this Management Order is to provide for adequate management of the Property which includes taking steps to resolve the following problems of inadequate management identified by the Tribunal:

- (a) Monitor and oversee the adjacent development to ensure that the interests in the Property are protected.
4. The manager shall manage the Property in accordance with the duties of a manager set out in the Service Charge Residential Management Code, 3rd Edition (“the RICS Code”) or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993.
  5. The manager must perform his duties under this Order independently and has an overriding duty to this Tribunal.
  6. The manager shall operate a complaints procedure in accordance with, or substantially similar to, the requirements of the Royal Institution of Chartered Surveyors.
  7. During the period of the appointment the manager must hold appropriate professional indemnity insurance cover of at least £1,000,000.
  8. The manager shall register this Order against the registered title to the property in accordance with section 24(8) of the Act.
  9. The manager is entitled to apply to the Tribunal for further directions.
  10. The manager or any other interested person may apply to vary or discharge this Order pursuant to the provisions of section 24(9) of the Act.
  11. Any application to extend or renew this Order should be made at least 3 months before the end date and must include a report of the management of the property during the period of the appointment to the date of the application.
  12. The manager is granted the following functions and owes the following duties relating to the management of the Property.

## **Functions and Duties**

### **Insurance**

1. The manager must maintain appropriate building insurance for the Property and ensure that the manager’s interest is noted on the insurance policy.

### **Ground Rent and Service Charges**

2. The manager shall collect the ground rents payable under the residential leases and shall account forthwith to the landlord for the payment of ground rent received.
3. The manager shall collect all service charges and insurance premium contributions payable under the residential leases, in accordance with the terms and mechanisms in the leases, to include the preparation of an annual service charge budget and accounts, and their distribution to

lessees. For the avoidance of doubt this Order does not displace covenants under the residential leases and the lessees remain bound by them.

4. The manager shall produce and provide to the lessees and to the landlord on a six-monthly basis a reconciliation to show all the expenditure that has been incurred against specific service charge headings. The first reconciliation shall be provided on 1 July 2021 and every six months thereafter.
5. All monies received by the manager in respect of the Property shall be held in a designated trust account.
6. The manager has the right to enforce payment of the service charge and may instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent in respect of management of the Property.

### **Contracts and Litigation**

7. The rights and liabilities of the Respondent under any contract of insurance for the property or for the provision of goods or services to the property shall become the rights and liabilities of the manager from the start date.
8. The manager may place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property.
9. The manager may prosecute or defend court or Tribunal proceedings relating to the management of the property (whether contractual or tortious) and may continue to prosecute or defend proceedings commenced during the appointment after the end date.

### **Repairs and maintenance**

10. The manager shall, subject to receiving sufficient prior funds, carry out all required repair and maintenance issues relating to the Property, having regard to the landlord's covenants in the residential leases, including instructing contractors to attend and rectify problems, and is entitled to recover the cost of doing so as service charge payable under the residential leases.

### **Licences to assign, approvals and pre-contract enquiries**

11. The manager shall be responsible for carrying out those functions in residential leases with regard to approvals and permissions, including those for sublettings, assignments, alterations and improvements, that the lease provides should be carried out by the landlord.
12. The manager shall be responsible for responding to pre-contract enquiries regarding the sale of a residential flat.

### **Remuneration**

13. The residential lessees are responsible for payment of the managers' fees which are to payable under the provisions of this Management



Order but which may be collected under the service charge mechanisms of their leases.

14. The sums payable are:

- (a) an annual fee of £750.00 inclusive of VAT per flat for performing the duties set out in paragraph 3.4 of the RICS Code (so far as applicable); and
- (b) any additional fees contained in a schedule to this Order for the duties set out in paragraph 3.5 of the RICS Code (so far as applicable).
- (c) VAT on the above fees.

### **End of Appointment**

15. Within 28 days of the conclusion of the Management Order, the manager shall prepare and submit a brief written report for the Tribunal, on the progress and outcome of the management of the property up to that date, to include final closing accounts. The manager shall also serve copies of the report and accounts on the lessor and lessees, who may raise queries on them within 14 days. The manager shall answer such queries within a further 14 days. Thereafter, the manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new Tribunal-appointed manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.

### **Disputes**

- 16. In the event of a dispute regarding the payability of a service charge a lessee, or the manager, is entitled to pursue an application to this Tribunal under section 27A of the Landlord and Tenant Act 1985.
- 17. In the event of a dispute regarding the payability of any sum payable under this Order, rather than under a residential lease (including as to the remuneration payable to the manager and litigation costs incurred by the manager), a lessee, or the manager, may apply to the Tribunal seeking a determination as to whether the sum in dispute is payable and, if so, in what amount.