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

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| **Case Reference** | : | CHI/29UL/LVM/2020/0008 |
| **Property** | : | The Grand, The Leas, Folkestone, Kent CT20 2LR |
| **Applicant** | : | The Association of Residents in the Grand |
| **Representative** | : | Adrian Carr of counsel (Direct Public Access) |
| **Respondents** | : | (1) Hallam Estates Ltd (freeholder)<br>(2) Mark Foley (Buckingham Suite)<br>(3) Toni Williams (Marlborough Suite)<br>(4) Julian Daggett (Ilchester Suite) |
| **Representatives** | : | Tanveer Qureshi of counsel (Direct Public Access) for the Second and Fourth Respondents.<br>The Third Respondent in person. |
| **Tribunal Member(s)** | : | Judge M Loveday<br>Mr K Ridgway MRICS<br>Mr P Gammon MBE |
| **Date of hearing/venue** | : | 16 and 30 December 2020 (video proceedings) |
| **Date of decision** | : | 30 December 2020 |
| **Date of reasons** | : | 28 February 2021 |

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**WRITTEN REASONS FOR DECISION**

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## Introduction

1. This application was dealt with as video proceedings on 16 and 30 December 2020. At the conclusion of the hearing the Tribunal gave its decision orally and the parties were then provided with a decision notice stating the Tribunal's decision. These are the written reasons for that decision under Rule 36(2)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

## Decision

2. Paragraph 1 of the Management Order dated 5 July 2018 is varied so as to extend the appointment of Ms Alison Mooney ARICS for a further period from the expiry of the current appointment until 8 January 2024.

## Background and previous applications

3. The application relates to the Grand, the Leas in Folkestone, which has a long and sorry history of litigation.

4. The premises comprise an elegant 7-storey grade II listed building c.1900 on the western side of the town, with views out to sea and across The Leas promenade. The elegant hotel once provided fashionable apartments to those wishing to associate with the hotel's high society guests in particular Edward VII. The premises now comprise 64 residential flats (or "suites") with other parts being kept for dining and commercial uses.

5. This Tribunal was unable to view the premises for the purposes of the application, but no objection was made to it reaching its decision without an inspection. Previous Tribunals have described the premises as forming a roughly rectangular building with a large sun lounge or conservatory facing southwards over the English Channel. The western elevation at Metropole Road includes the former main entrance to the hotel and the hotel reception. There are outbuildings and a car parking area to the north, and formal gardens the east. Access to the car parking area is through a passageway leading from the former hotel reception area to a doorway in the northern elevation. This passageway passes the foot of one of the stairwells with a staircase and lift leading to the upper corridors, where numerous residential flats are located. That passageway has featured in several recent applications to the Tribunal.

6. The suites are let on long leases, which it was agreed are all in similar terms. None of the three bundles provided for the present application include a copy of any lease, but it is not necessary to refer to the provisions of the leases save in general terms.

7. At this stage one must say something about the various parties involved with the premises, both those who participated in the present application and those who did not:

   (a) The Applicant is the Association of Residents in the Grand, ("AORG"), which is a tenants' association recognised under s.29 Landlord and Tenant Act 1985. A key figure in the association is Mr Peter Cobrin, who is a lessee at the Chilham Suite.
   (b) The First Respondent is Hallam Estates Ltd, although counsel informed the Tribunal at the second hearing that Snowden J had made an administration order in respect of the company on 17 December 2020. The appointed administrators were Mr AH Maxwell and J Beard of Begbies Traynor.
   (c) The Second, Third and Fourth Respondents are lessees of flats within the premises.
   (d) Two of the most significant figures in the history of events at The Grand are Mr Michael and Mrs Doris Stainer. Mr Stainer was apparently involved in the conversion of the premises and historically the couple have been closely associated with the freehold interest. For example, Mr and Mrs Stainer were until 2018 director and company secretary of Hallam Estates (see para 16 of the Tribunal decision dated 5 July 2018) although it is understood they have since resigned these positions. Mr and Mrs Stainer were also registered proprietors of some 18 flats in the premises, most of which have been rented as short-term holiday lets. Mr and Mrs Stainer were made bankrupt in November 2018 and it appears that the relevant leases of the flats now vest in their trustees in bankruptcy under s.306 / 283 Insolvency Act 1986.

8. As already explained, the premises have a long history of legal disputes. But for present purposes it is only necessary to deal with the various orders made by previous tribunals under Pt.II Landlord and Tenant Act 1987.

9. The first management order under s.24 of the Act was made by the Tribunal on 11 June 2014. Following a three-day hearing, the Tribunal appointed Mr D Hammond MRICS as manager and receiver (CHI/29UL/LAM/2013/0019). The appointment was made for a period of 5 years.

10. In 2018, Mr Hammond and AORG applied to vary the management order. A two-day hearing took place on 26-27 April 2018 with further written submissions (CHI/29UL/LVM/2018/0001). In its decision dated 5 July 2018, the Tribunal extended the existing appointment and appointed Ms Mooney in place of Mr Hammond. The Tribunal notes that although they were parties to the application, Hallam Estates and Mr and Mrs Stainer did not attend the hearing, and their absence was considered in some detail at paras 34-49 of the decision.

11. The 2018 Tribunal considered the circumstances which led to the 2014 Management Order, which it summarized at para 151:

> "Essentially, the previous Tribunal found that the landlord had neglected its responsibilities to maintain the building for a significant period of time on that it took no action to collect service charges and outstanding arrears from Mr. and Mrs. Stainer. The previous tribunal also decided that the proposals of Mr. Baker, the previous managing agents, for the renovation and repair of the building were a recipe for dispute, litigation and unfinished work."

The Tribunal found that varying the existing Management Order would not result in a recurrence of these circumstances under s.24(9A)(a) of the 1987 Act, and that it was just and convenient to vary the order. It also considered (and rejected) challenges to Ms Mooney's suitability for the appointment. It therefore made the new appointment and substantially revised the terms of the 2014 Management Order. The relevant provisions of the 2018 Management Order material to this application appear in Appendix I to this decision.

12. On 1 October 2018, the Tribunal gave a further decision in relation to several outstanding matters. In particular, it gave directions to attach a penal notice to the 2018 Management Order.

13. The 2018 Management Order provided that Ms Mooney's appointment was to be for a period of two years, but that this was not to take effect until any appeal process was completed. On 27 July 2018, Hallam Estates sought permission to appeal the variation order, and permission to appeal both the substantive decision and the decision of 1 October 2018 were refused by both this Tribunal and the Upper Tribunal (Lands Chamber) (LRX/109/2018). An unsuccessful attempt was then made by Hallam and Mrs Stainer to apply for judicial review of the refusal of permission to appeal, the applications being refused as 'totally without merit' on 27 September 2019. The various appeal avenues having been exhausted, Ms Mooney's appointment eventually took effect on 9 January 2019.

14. On 24 October 2019, Ms Mooney issued an application for directions under s.24(4)(b) of the 1987 Act. The application sought the Tribunal's permission under para 3(l)(iii) of the 2018 Management Order to revoke various consents for underletting etc. The application for directions was opposed by Hallam Estates and by Mr and Mrs Stainer (albeit that at the time it appears their interest in the flats had already passed to the trustees in bankruptcy). It was also opposed by other lessees, including the Second and Fourth Respondents in the present matter. A remote hearing took place on 5 May 2020, where the Stainers were represented by counsel. The Tribunal granted the application in a detailed decision dated 29 May 2019, but the Stainers again applied for permission to appeal. Permission was refused by this Tribunal on 10 July 2002 and by the Upper Tribunal on 10 September 2020 (LRA/75/2020).

15. Before the application for directions was concluded, another front opened in the internecine conflict over management of The Grand. On 4 March 2020, Mr and Mrs Stainer, Hallam Estates and the lessees of five flats (including the Second and Fourth Applicants) applied to discharge Ms Mooney as Manager (CHI/29UL/LVM/2020/0001). AORG was joined as a Respondent and a remote hearing took place on 30 June and 1 July 2020. At the hearing, the applicants were represented by Mr Tanveer Qureshi of counsel, while other residents (including Mr Stainer) appeared in person. In the event, the Tribunal rejected the application to vary in a detailed decision dated 11 August 2020.

16. The Tribunal decision of 11 August 2020 was referred to extensively in the present proceedings, and the Tribunal will return to the decision below. But suffice it to say that the main grounds of the application to discharge Ms Mooney as Manager were a wide-ranging critique of her stewardship of the premises, including lack of progress with repairs and actual and apparent partiality in her dealings with the premises. In the case of Mr Foley (who is of course the Second Respondent in the present application) and Mr Stainer, the allegations of misconduct extended to the suggestion there was a "plan" or an "improper alliance" between Ms Mooney and Mr Cobrin to enable the latter to acquire the freehold of the premises at a below market price. In its decision, the Tribunal rejected each of the criticisms of the Manager's conduct bar one. In particular (at para 65) the Tribunal characterised the allegation of an improper scheme as "a wholly baseless and unpleasant attack on the personal integrity of the Manager, which the Tribunal has no hesitation in rejecting". The one ground of potential criticism (at para 66 of the decision was as follows):

> *"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."*

By an addendum to the decision, the tribunal added a further condition to para 3(o) of the 2018 Management Order. Again, the relevant text is as follows:

*"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."*

As far as the issue of 'local agents' was concerned, the Tribunal indicated that it was minded to entertain a variation of the 2018 Management Order. After hearing from the parties, the Tribunal added a further sentence to the existing order as appears Appendix I to this decision. That sentence is central to the issues in the present application.

17. Before leaving the 2020 Tribunal decision, one other detail should be mentioned which is of relevance to the issues of Mr Stainer's participation in these proceedings. During cross-examination, it was put to Mr Stainer that following his bankruptcy, he had no continuing interest in the premises and that the leases of the various flats he 'owned' in fact vested in his trustees in bankruptcy: see para 21 of the

Tribunal decision. In the present matter, Mr Carr again referred to the bankruptcy of the Stainers and repeated the contention that they have no standing in these proceedings.

18. Mr and Mrs Stainer applied for permission to appeal the 2020 Tribunal decision on 17 September 2020. Interestingly, although the application for permission to appeal was later renewed to the Upper Tribunal, that application was made by Hallam Estates, not the Stainers. The Upper Tribunal refused permission to appeal on 20 January 2021 (LC-2020-49).

19. The above gives only a taste of the extraordinary amount of litigation surrounding these premises. The history omits the very many applications for adjournments, debarring orders, Rule 13 costs orders etc. connected to the above proceedings. There have also been claims for payment by Ms Mooney against Hallam Estates and the Stainers, including applications to the Tribunal under s.27A of the 1985 Act and protracted insolvency litigation involving both Mr and Mrs Stainer and Hallam Estates. For example, on 21 February 2020, a director of Hallam named Mr Robert Moss (with Mr Stainer acting as his McKenzie friend) made two applications to restrain the presentation of a petition to wind up Hallam Estates by Ms Mooney. Deputy Judge Frith J rejected both applications, in one case finding Hallam's application to be 'totally without merit' (CR-2020-000079 and CR-2020-000129). In other court proceedings, there was an unsuccessful application by the Stainers (in the Name of Hallam Estates) for an injunction to stop Mr Hammond entering the residential parts of the premises (mentioned in the 2018 Tribunal decision) and an equally unsuccessful attempt by Hallam to obtain a County Court injunction against Ms Mooney which was dismissed on 26 November 2019 with costs (F00CT994). Indeed, at the start of the present hearing, Mr Carr suggested there had been no fewer than 28 substantive decisions of courts or tribunals in connection with The Grand since 2014 where Mr and Mrs Stainer or Hallam Estates were parties. The Tribunal has no reason to doubt this is the case.

20. It is against this background that the present application was brought.

**The current application and case management**

21. In a sense, the application could not be simpler. The application form dated 14 September 2020 names AORG as Applicant and Hallam Estates as Respondent. It seeks a variation of the 2018 Management Order (i) to extend Ms Mooney's appointment to 8 January 2024 and (ii) to amend paragraph 13. The application form includes a long schedule of interested parties, primarily the lessees of the suites.

22. Directions were given on 2 October 2020, which required the Applicant to send the interested parties (and the Manager) a copy of the application and the directions. By 16 October 2020, any interested party could apply to be joined, provided they explained their interest in

the premises. Further Directions were given on 30 October 2020, and those directions explain the various representations which were received up to that stage. Suffice it to say that the Tribunal was fully satisfied the Applicant had complied with the service requirements in the earlier directions. It joined the Second Third and Fourth Respondents and extended time for Mr Stainer to apply to be joined as a party until 6 November 2020 (expressly flagging up the question whether any leases vested in his trustees in bankruptcy). A remote hearing was fixed for 30 November 2020 with a time estimate of 1 day.

23. At the remote hearing on 30 November 2020, the Applicant appeared by counsel. Hallam Estates did not appear and was not represented. The Third Respondent was in person. The Second and Fourth Respondents retained Mr Qureshi, but he had fallen ill over the weekend and was unable to represent them or prepare a skeleton argument. The Tribunal therefore adjourned the hearing to 16 December 2020 and used the time available to deal with several applications and case management issues - details of which are given in the Further Directions dated 30 November 2020. It should be said that Mr Stainer was present at the remote hearing and provided a skeleton argument and witness statement. The Tribunal expressly dealt with Mr Stainer's participation in the proceedings, finding that he should not be joined as a Respondent: see para 13 of the Further Directions. The Tribunal also made an interlocutory order under s.24(1) of the 1987 Act extending the existing appointment of the Manager to 28 February 2021.

24. At the resumed hearing on 16 December, Mr Carr again appeared for the Applicant. The Third Respondent appeared in person and Mr Qureshi appeared for the Second and Fourth Respondents. As to Hallam Estates, there was an email from Mr Moss timed at 9.00am on the morning of the hearing, in the following terms:

> "As the evidence on which the company had sought to rely has been removed from the proceedings, and the application to reinstate it has not received a response, the company is unable to participate".

The Tribunal delayed the start of the hearing for the Tribunal to try to contact Mr Moss. But nothing further was heard.

25. Both counsel asked the Tribunal to proceed in the absence of Hallam Estates and the Tribunal agreed to go ahead with the hearing. The reasons for doing so under Rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 were as follows. The freeholder had notice of the hearing (indeed, Mr Moss's email expressly acknowledged this). It was also in the interests of justice to proceed without Hallam Estates:

(a) The email was wrong in two respects. Hallam Estates had not submitted any evidence (only Mr Stainer had attempted to do so shortly before the hearing on 30 November). Neither had Hallam

made an application to "reinstate". But whatever the reason, Hallam had made a conscious decision not to attend. It could have attended and made representations with or without evidence, or it could have applied to put in late evidence. It chose to do neither.

(b) Moreover, Hallam Estates did not suggest it wanted the hearing adjourned. It simply stated it would not attend. If the Tribunal delayed any further, there was no suggestion Hallam would attend the delayed hearing.

(c) The first intimation that the Tribunal had that Hallam would not attend was 9.00am on the first day of an adjourned hearing. This was very late indeed.

(d) Hallam had not (as far as the Tribunal is aware) filed any statement of case or evidence explaining its position. It had shown a singular lack of enthusiasm for engaging with the proceedings at all.

(e) There was a developing pattern of non-attendance at crucial hearings. In particular, Hallam did not attend the hearing of the 2018 Management Order itself or the first day this matter was listed on 30 November 2020.

(f) The hearing had already been adjourned once, and the Tribunal had allocated time to the hearing at short notice.

(g) The matter was urgent. The Management Order was to expire in a short time. The Tribunal had already extended the 2018 Management Order once on an interlocutory basis, and (if the Tribunal refused the application) time would have to be allowed for an orderly transfer of management functions from the Manager back to Hallam Estates (or its managing agents).

(h) Continued uncertainty about future management would not meet the objectives of the 2014 and 2018 Management Orders.

(i) The other parties had incurred significant costs in engaging counsel, with little prospect of recovering those costs.

(j) The prejudice to the freeholder was not as great as might otherwise be the case. Three other objectors were represented by experienced and competent counsel who could be expected to advance all likely grounds of opposition to the variation application.

26. The hearing therefore proceeded without any participation by Hallam Estates. It also proceeded without Mr Stainer, who had not been joined a Respondent, and who does not appear to have any continuing interest in the premises. As a result of the order of 30 November 2020, none of the evidence previously submitted by Mr Stainer was before the Tribunal at the adjourned hearing.

27. In any event, the hearing was not concluded on 16 December within the time estimated and the Tribunal therefore arranged a further day to complete matters. As explained above, an administration order was made in relation to the First Respondent between the two hearings. When matters resumed on 30 December, counsel for the Applicant stated that the company's administrators were aware of the part-heard date, and that they had withdrawn their objection to the application (although the Tribunal has not had any confirmation of this from the administrators directly). Once again, the Tribunal decided to proceed in

the absence of Hallam Estates – for essentially the same reasons set out above.

## The issues

28. At the start of the hearing on 16 December 2020, the Tribunal agreed the issues to be decided with both counsel and with the Third Respondent.

29. The most important developoment was that in his skeleton argument, Mr Qureshi suggested his clients' only objection was to Ms Mooney continuing as the Tribunal-appointed Manager. At the hearing, he accepted (on behalf of the Second and Fourth Respondents) that the 2018 Management Order should be extended for three years, although he maintained his objection to the identity of the Manager. The Third Respondent agreed this was also her position.

30. It follows that the substance of the present application was conceded by those who attended the hearing, and the only questions for the Tribunal were (1) whether Ms Mooney should be the appointee and (2) whether para 13 of the 2018 Management Order should be amended. It should also be noted that at the hearing the Third Respondent suggested a further amendment to paragraph 48 of the 2018 Management Order.

31. The other point clarified by the parties at the outset concerned the relationship between the present application and its determination of 11 August 2020. The 2020 Tribunal decision was (as here) an application to vary the 2018 Management Order under s.24(9) of the Act which focussed on Ms Mooney's suitably to continue as Manager. The application also involved many of the same parties as the present matter. Questions of issue estoppel and cause of action therefore plainly arose. Mr Qureshi realistically accepted that his clients were not seeking to re-litigate matters which were decided by the previous Tribunal or matters which could have been raised in the 2020 variation proceedings. In support of the contention that Ms Mooney should not be the new appointee, he would limit his evidence to (i) findings made in the August 2020 decision and (ii) events since June 2020. Mr Carr and the Third Respondent both agreed with this approach.

32. In effect, the relevant evidence is therefore limited to the findings of the previous Tribunal and Ms Mooney's stewardship since 30 June 2020. Sadly, even that agreement proved illusory, since it proved necessary to consider matters going back several years before the Tribunal could evaluate the Manager's conduct over the previous six months.

## The evidence

33. At the hearing, the Tribunal heard evidence from Mr Cobrin and Ms Mooney (for the Applicant), and from each of the Second, Third and Fourth Respondents. Each of them gave evidence on a wide range of matters, including matters which were not eventually relied upon by counsel and the Third Respondent in their closing submissions. The

Tribunal therefore limits the evidence below to the matters relevant to its decision.

*Mr Cobrin*

34. Mr Cobrin relied on a statement dated 18 November 2020. After setting out the litigation background, he stressed that a majority of lessees wished to see Ms Mooney continue in place. He then dealt with the two new points raised in the present application.

35. As to insurance, Mr Cobrin referred to two reports which were central to the dispute between the parties. The first was a report from Aviva Insurance dated 2 September 2020 ("the Aviva Report"), which explained the reasons why the insurer did not renew cover in October 2020. The second was a report by a structural engineer Christopher Hore dated 17 July 2013 ("the Hore Report"), which had plainly been prepared for Mr Stainer. Notwithstanding para 7 of the 2018 Management Order, it was not passed over to Ms Mooney when she took over management. Mr Cobrin relied on Ms Mooney's evidence to that effect.

36. As far as the continuing relationship with Ms Mooney was concerned, Mr Cobrin referred to para 6 of the Addendum to the Order of August 2020. For the avoidance of doubt, Mr Cobrin had never been an "employee" of Ms Mooney, but he carried out "various local tasks to support the smooth running of the Grand on a day-to-day basis". He also liaised with non-members of AORG, some of whom, have supported actions taken to address issues in the Grand".

37. Mr Cobrin was subjected to rigorous cross-examination on the first day of the hearing, although notably neither counsel relied on the answers he gave in their closing submissions. The Tribunal therefore need only deal with Mr Cobrin's evidence fairly briefly.

38. Mr Cobrin was asked about his relationship with the Shepway Vox website. He denied posting anything on the website, or indeed having "effective control" of it. But he admitted that (with others) he provided the website with information about The Grand. Mr Cobrin admitted the information he provided the website included a photograph of a cooker hood in the commercial parts taken by Ms Mooney on 25 August 2020. He denied the article on the website which included that photograph (14 September 2020) showed any "personal vendetta" against Mr Stainer. Mr Cobrin admitted that when Private Eye picked up the story, he had given a quote to the magazine. Mr Cobrin was also asked about the Hore Report in some detail.

39. In response to questions from Ms Williams, Mr Cobrin admitted he was paid £850/mo for providing services on site. He did not know about Mr Bispham. The arrangement was the quickest way to deal with issues at The Grand and avoid any duplication of work. He was not a servant or agent, just a "local point of contact". His costs were paid from the

service charge account. There had been no application for the role. In response to questions from the Tribunal, he agreed he was not totally independent. He was performing a role on behalf of Ms Mooney and if she said "do that", he said "I do that".

*Ms Mooney*

40. Ms Mooney relied on a witness statement dated 18 November 2020 and to her report to the Tribunal dated 26 October 2020. She started by stressing the challenges faced as a result of non-payment of service charges. In particular, she had pursued the Stainers for unpaid service charges for their 19 flats and pursued Hallam Estates for unpaid charges relating to the retained parts. The latter owed £133,483.75 with another £75,000 falling due on 1 January 2021.

41. The Manager dealt in some detail with the Hore Report. Before 2020, she had only been aware of "generalised comments" about the condition of the South Elevation. She became aware of the report following a conversation between Mr Cobrin and Ms Nicola Fairhurst of Tolsons (who Mr Stainer had suggested as an alternative Manager in the 2020 variation proceedings). There was an email of 22 July 2020 from Ms Mooney to Mr Moss and Mr Stainer requesting a copy of the Hore Report. It finally came into the hands of AORG via Mr Foley. Once this happened, it was made available to two lessees (Mr Kirkham and Mr Jefford), and Ms Mooney then saw a copy. In the light of this, the Manager appointed a structural engineer (Mr Gardiner).

42. Ms Mooney had asked Mr Hammond whether the report was made available to him when he became Manager, and Mr Hammond denied it. The Aviva Report specifically stated that the Hore Report "has only just been obtained by Alison Mooney".

43. On 25 August 2020, a surveyor from Aviva Insurance (Shirley Albury) carried out a "routine inspection" and prepared a report dated 2 September 2020. Ms Mooney provided a copy of the Hore Report to the insurer "as I was legally obliged to do". They indicated that cover for the forthcoming year was now "a serious concern". Aviva temporarily extended cover to 12 October 2020, but the policy expired. Ms Mooney employed the brokers AJ Gallagher in addition to the previous brokers St Giles, but the premises were "uninsured and uninsurable". Ms Mooney produced the reports from both brokers explaining the problems obtaining cover. On 16 November 2020, St Giles stated there had been an "insurance declinature" due to "a number of factors". The "endless" list included:
    (a) That 7 fire enforcement notices had been served by the fire authority.
    (b) That "a structural engineers report was conducted by Christopher Hore in 2013 but never shared with insurers. It detailed corroded steel beams which are allowing water penetration into the building and outward movement of some parts of the South elevation."

(c) The poor standard of the commercial areas.

Gallagher's email of 18 November 2020 stated that "the reason we cannot place this risk is due to the extremely large fire risk posed to the property due to the commercial area". Ms Mooney therefore commissioned a Fire Risk Assessment by Risk Safety Services dated 17 September 2020, which she produced to the Tribunal.

44. As far as "local support" was concerned, Ms Mooney stated that: "mindful of the concerns of the Tribunal in regard to the "employment" of a local agent who was also a resident of the Grand, I changed the arrangements for local support, noting the directions of the Tribunal in paragraph 6" of the Addendum to the 2020 decision. Mr. Cobrin and Mr Bispham were "now dividing up responsibility for local support issues, the emphasis being 'support', and this is managed through a central email account through which residents can report issues with direct phone lines for urgent issues". Neither was an employee or agent. For example, most recently Mr Cobrin has dealt with access to and the deep cleaning of one flat, managed access to another following the death of a resident, and the transfer of a family from one flat to another having first supervised the deep cleaning and the removal and replacement of carpets and an overhaul of the central heating. Mr Bispham was relatively new to the role but is being trained to manage the fire alarm system and its maintenance.

45. Ms Mooney was cross-examined at some length on the first day of the hearing. She agreed that "cancellation of insurance under [her] watch was a very serious matter".

46. As to the relationship with Mr Cobrin, Ms Mooney agreed that the article which appeared on the Shepway Vox website on 4 November 2020 included a photo of a cooker hood in the commercial parts that she had taken. She had provided this (and other photos) to the AORG Committee because she had been shocked at the condition of the basement. The article was highly critical of Aviva and its Chief Executive Amanda Blanc. Ms Mooney denied the article was published before Aviva made the decision to refuse cover. Ms Mooney did not disapprove of investigative journalism, although she did not think the Shepway Vox articles were accurate.

47. The relationship was a "changed" role. She had reached out to Mr Bispham (who was one of the applicants in the 2020 variation application) and "split" Mr Cobrin's previous role. Both gentlemen submitted invoices for payment and expenses such as bin bags etc. Mr Bispham was paid £400/mo. She accepted it had been a mistake to place too much reliance on Mr Cobrin before the previous tribunal. She had redefined his role. Ms Mooney was taken to the email of 4 September 2020 at Appendix II to this decision. It was put to Ms Mooney that whatever she chose to call Mr Cobrin, he was her "agent". But she maintained she had "changed" the arrangement.

48. As far as the Hore Report was concerned, Ms Mooney repeated the sequence of events set out above.

*Mr Daggett*

49. Mr Daggett's evidence appears in a witness statement dated 13 November 2020 and he was cross examined at the hearing. The 15-page witness statement was evidently not prepared with professional help and referred to numerous matters which went beyond the arguments relied on by counsel. The Tribunal limits its summary of the witness's evidence to the matters relied upon by counsel in closing submissions.

50. Mr Daggett suggested the failure of the insurance cover was because the Hore Report was deliberately withheld from Aviva. The Aviva Report found the risk was "significantly below Aviva Standards". It mentioned the Hore Report as follows:

> "A report by Christopher Hore, Chartered Engineers detailing structural damage to the property on the South elevation has been added to the APPS record. Whilst this report was completed in July 2013 a copy has only just been obtained by Alison Mooney. This details problems of corroded steel beams which are allowing water penetration into the building and outward movement of some parts of the South Elevation. Underwriters should note point 8.2 of the report which references a likely [sic] of similar problems elsewhere".

51. Mr Daggett next referred to the article on the Shepway Vox website published on 4 November 2020 which attacked the CEO of Aviva for withdrawing their insurance cover, and generally criticized Aviva for taking the decision it did. Mr. Cobrin linked to the Shepway Vox article on the AORG Twitter page. Mr Daggett asked how this very misleading article helped lessees of The Grand to somehow persuade an insurance company to provide us with the buildings insurance we expect the Manager to arrange? Mr Cobrin also plainly contributed to the Private Eye article, which he pinned to the residents' notice board.

52. As to the Hore Report, Mr Daggett suggested both Mr Hammond and Ms Mooney had a copy of the report. He relied on various documents to support this:
    (a) Mr Baker (the managing agent prior to the appointment of Mr Hammond in 2014) had met with Mr Hore in 2014 regarding the stability issues in the southern elevation.: see email from Mr Baker dated 3 April 2014.
    (b) The "handover checklist" from Mr Baker to Mr Hammond dated 8 August 2014 "enclosed a structural engineer's report on the southern elevation" including urgent work to the failing steel beams.

(c) Mr Hammond sent lessees a newsletter on 20 November 2014 which referred to "the remedial works to the steelwork that is required that was investigated by Christopher Hore".
(d) There was a s.20 notice dated 16 January 2015 (again sent by Mr Hammond) which stated that "I have met with the structural engineer" about "a more structural element of the Building which includes the replacement of structural steelwork on the south elevation."
(e) Previous tribunals had observed the defects, which Ms Mooney was aware of. It was inconceivable that Mr Hammond did not hand over the Hore Report to Ms Mooney.

53. Mr Daggett was cross-examined by both the Third Respondent and by Mr Carr. In response to questions from the Third Respondent, he started his main concern was oversight and the "too close" relationship between the Manager and Mr Cobrin/the AORG Committee. It was a question of trust.

54. Mr Carr took Mr Daggett through the various insurance documents, and it is unnecessary to set out the answers given. But it was put that none of the documents showed Ms Mooney was aware of the Hore report prior to late 2020.

*Mr Foley*

55. Mr Foley provided a witness statement dated 11 November 2020 and he was also cross-examined at the hearing. His main concern was the "strong association" between Ms Mooney and Mr Cobrin, which had compromised the proper conduct of proceedings. The employment of Mr Cobrin by the Manager was a "blatant breach" of the 2020 Tribunal order. A significant part of the statement (and cross-examination) covered the adverse findings of the 2020 Tribunal about the evidence given by Mr Foley on that occasion. But that evidence is not relevant to anything before the present Tribunal.

*Ms Williams*

56. Ms Williams relied on a statement dated 20 November 2020. The first issue raised was that on 12 September 2020, Ms Williams asked questions about the service charge accounts for the year ended 28 September 2019. She exhibited two emails with some 39 specific requests. Ms Mooney replied to five of these on 16 September. Ms Williams chased the other answers and on 21 September 2092 the Manager replied that Ms Williams had had "everything you are entitled to". On 30 September, Ms Mooney explained her London office was closed, but she would speak to solicitors about what arrangements could be made. On 12 November, Ms Williams made a request under s.22 Landlord and Tenant Act 1985 for a summary of relevant costs. On 13 November, Ms Mooney said she was considering the best way to arrange a Covid-19 secure inspection. On 24 November 2020,

Ms Williams made a formal request under s.22 Landlord and Tenant Act 1985. It seems the summary was provided, because on 24 November Ms Williams asked for an inspection of the "accounts, invoices, receipts and information in relation to The Grand Service Charge Fund". Including "full disclosure of all bank statements relating to all transactions from the service charge funds as well as maintenance funds / bank statements …", to which Ms Mooney replied she was sending a link.

57. In addition, Ms Williams repeated the contention that the arrangements with Mr Cobrin were unsatisfactory. She described Mr Cobrin as using "discrimination, bullying & harassment … cyber bullying, harassment, stalking and internet trolling", suggested he was "obsessed with distributing his extreme hatred towards the Freeholder" that he was "breaching Human Rights, discrimination, data protection laws regarding confidentiality & disclosing of personal data without consent" and was using "scaremongering tactics like harassment, bullying [and] discrimination". In her initial submissions, Ms Williams also made allegations about "misuse of funds" amounting to "over £100k", but she confirmed at the hearing this was not being pursued.

**The Law**

58. There was no dispute about the basic legal position.

59. 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."

60. In this case, the application is made by a "person interested" (i.e. AORG). But AORG is not a "relevant person" such as a landlord: see definition in s.24(2ZA). It follows that the criteria in s.24(9A) do not therefore strictly speaking need to be met in this case. However, quite obviously it is unlikely any Tribunal would change its appointed Manager if the change would lead to either a recurrence of the circumstances which gave rise to the original Management Order or if it was not just and convenient to do so.

61. 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:

> 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[1]. 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?"

62. Provided it has regard to relevant considerations, this Tribunal therefore has a wide discretion to vary. It does not need to be satisfied that either the conditions in s.24(9A) or s.24(2) are satisfied before doing so.

## Applicant's submissions

63. The Applicant's main case related to the re-appointment of Ms Mooney.

64. Mr Carr first addressed the evidence about the Hore Report. It was prepared for "Mr Michael Stainer, Hallam Estates" in respect of "Structural Damage" to the "Edinburgh Suite, South Elevation". It was important to understand that the report dealt with both waterproofing and structural issues. Para 7.1 f the report mentioned previous recommendations about "measures to improve the waterproofing of the structure…".

65. He next addressed the issue of how the Hore Report came into Ms Mooney's hands. On this, there was an email of 22 July 2020 from Ms Mooney to Mr Moss and Mr Stainer requesting a copy of the report. Ms Mooney had asked Mr Hammond whether the report was made available to him when he became Manager, and Mr Hammond denied it. The Aviva Report specifically stated that the Hore Report "has only

[1] 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).

just been obtained by Alison Mooney". There was then a much more detailed fire risk assessment by Risk Safety Services dated 17 September 2020 and the report from the brokers AJ Gallagher dated 18 November 2020 AJ Gallagher. Counsel submitted these conclusively showed Ms Mooney did not have a copy of the Hore Report until mid-2020. Counsel submitted that Mr Hammond therefore said he did not have a copy of the report, Ms Mooney said he did not give it to her and the documents confirmed this. Moreover, there was no particular reason why Ms Mooney should conceal such a report, since the structural problems with the south elevation were known to her since at least 2018 (when mentioned in the 2018 Tribunal decision at para 103).

66. Mr Carr also went through Mr Daggett's evidence in some detail. The "high point" of this evidence was the 'handover checklist' provided by Mr Baker to Mr Hammond dated 8 August 2014, which stated that it "enclosed a copy of the structural engineering report on the south elevation". But it was perfectly possible this was a reference to the "waterproofing" recommendations mentioned in para 7.1 of the Hore Report rather than the Hore Report itself.

67. Mr Carr accepted that non-disclosure of the Hore Report would have been a material consideration for Aviva to refuse to pay out on a claim. But it was clear from the Aviva Report and the brokers' emails that it this factor alone did not make any significant difference to the decision by the insurers not to offer cover in 2020. Insurance was declined for a variety of reasons, and it was just an unfortunate coincidence that the Hore Report emerged at the same time insurers were considering the risk of offering cover for The Grand.

68. As to the relationship with the local "eyes and ears", Mr Carr initially suggested that Mr Cobrin and Mr Bispham were not the employees or agents of Ms Mooney. But in closing submissions, he accepted that the continued employment of Mr Cobrin at the very least broke the spirit of the 2020 order. Counsel suggested Ms Mooney had misunderstood what the August 2020 variation allowed her to do (or more pertinently, what it did not allow her to do) and Ms Mooney plainly believed she could still operate in the way she chose. The Tribunal could of course further re-re-work para 26 of the 2018 Management Order to make clear Mr Cobrin could only act as chair of AORG. But this was a genuine misunderstanding on the Manager's part.

69. Mr Carr made several further points to support the application to continue with the present Manager:
    (a) 24 lessees had signed forms stating they were happy with Ms Mooney.
    (b) There had been significant progress with management. The administrators appeared to have withdrawn the freeholder's objection – or at the very least Hallam Estates had not attended. The Grand was now insured due to Ms Mooney's efforts. The Manager had made progress recovering the arrears. She expected the administrators for Hallam to co-operate, and they

in turn had power to forfeit the leases of the Stainer flats. The Stainer leases now vested in their trustees under s.306 Insolvency Act 1986. Ms Mooney had been impressing on the trustees to pay up, and contracts had been exchanged for the sale of two flats, which would release £90,000 in service charges. This process was ongoing and would take time. The administration meant there would be a reduction in litigation, so the Manager could get on with managing the premises. This had been the result of the Manager's robust approach. Apart from the service charges, the sale of the Stainer flats meant there would new leaseholders.

(c) Ms Mooney had been in post for just under 2 years. The record of litigation showed the sheer amount of work involved in managing these premises. Now was the time for continuity, not change. Putting a new Manager in place would mean the loss of precious time.

70. The Application also sought directions as follows:

> "That the Landlord shall designate an officer or direct employee of Hallam Estates Ltd with whom the Manager can liaise regarding all aspects of the performance of this Order and who will have the full authority of the Landlord to act in relation thereto. If the Landlord wishes to appoint a different person to act on its behalf in connection with the matters concerning the Manager's performance of this order, the Landlord shall notify the Manager in writing The Landlord shall not appoint Mr. Michael Stainer or Mrs. Doris Stainer to act on its behalf until the Manager has confirmed in writing that Mr. and Mrs. Stainer have complied with their obligations as leaseholders and their applications under the Tribunal's directions."

Counsel's skeleton argument suggested a variation of para 13 of the 2018 Management Order would avoid the Stainers having any further direct role in the management of the commercial parts of The Grand until they (or their trustees in bankruptcy) had complied with their obligations under the leases.

## The Second and Fourth Respondents' submissions

71. Mr Qureshi's skeleton argument set out his clients' position in uncompromising terms. It was submitted "there are significant concerns about the conduct, performance and competence of Ms Mooney" and that "in these circumstances, it is neither just, nor convenient, in all of the circumstances, to extend her appointment".

*Local management*

72. What counsel described in closing as his "primary point" related to the relationship between Mr Cobrin and Ms Mooney. The 2020 Tribunal had made its position about this relationship abundantly clear in para 66 of its decision, and such was the concern of the Tribunal that it had

amended the 2028 Management Order specifically to prevent tenants being employed as a local agent for the Manager. Following that order, if Mr Cobrin were to continue to be involved with Ms Mooney, it could only be for the very limited purposes of communication allowed under para 48 of the 2018 Management Order. The evidence showed that Ms Mooney was continuing to employ Mr Cobrin, who was a divisive figure in the community. Rather than taking heed of the Tribunal's concerns, Ms Mooney had "tried to play within the rules and further entrench Mr Cobrin's position". She had plainly employed Mr Cobrin as an "agent", even though he was also a tenant (and indeed as was Mr Bispham). Counsel relied on the email of 4 September 2020 to establish the agency. Mr Qureshi therefore contended there was both a breach of the original obligation to act impartially in para 19 of the 2018 Management Order and the limitation to para 3(o) of the powers of the Manager made by the Tribunal in August 2020.

73. As it turned out, the employment of Mr Cobrin did in fact lead to problems. Mr Qureshi invited the Tribunal to find that Mr Cobrin's "eagerness to disseminate information and misinformation on social media" had led or contributed to the withdrawal of insurance cover by Aviva. Mr Cobrin had also used confidential material he obtained to pursue his own personal vendetta against Mr Stainer. But Ms Mooney had proved indifferent to these activities. She had told the 2020 Tribunal that had she been aware that Mr Cobrin was leaking material to a local website, she would have been "absolutely furious". But despite there being incontrovertible evidence Mr Cobrin was dealing with the media after August 2020, Ms Mooney did not take a single step to disassociate herself from Mr Cobrin. Instead, she forged what Mr Qureshi described as a "partnership" with Mr Cobrin, which was completely contrary to the Tribunal's directions. The 2020 Tribunal had found (at para 66) that the previous arrangements with Mr Cobrin affected the "appearance of the Manager's impartiality and fairness" and the additional directions made it abundantly clear the Manager should not employ tenants as local agents. The new arrangements were a breach, they were an extensive breach and there was no reasonable excuse for them. Counsel described the email of 4 September 2020 as evidence that Ms Mooney was "shrugging her shoulder and putting in place a plan completely contrary to what the FTT wanted".

*Insurance*

74. The other main strand of counsel's argument related to insurance. Hopefully, the position was that the building was now insured. But for the purposes of the present application, it was relevant that insurance cover had lapsed in October 2020, and in considering the present application there were two material factors which caused cover to be withheld.

75. The first consideration related to publicity. In his closing submissions, counsel suggested that on any view October 2020 was a particularly sensitive time for The Grand's insurance. Whatever the rights and

wrongs, the fact remained that the Shepway Vox article of 14 September 2020 was unhelpful. In Mr Daggett's words, "how do these attacks on Aviva help lessees persuade an insurance company to provide" cover? One of the images in the Shepway Vox article was taken by the Manager. That the publicity caused the insurer to withdraw cover was admitted by Ms Mooney in her witness statement at para 4(b)(xiv)

76. However, the main submission relating to insurance concerned the July 2013 Hore Report. In his skeleton argument, Mr Qureshi stated that Ms Mooney's "failure to act on the Hore structural report led directly to the cancellation of the insurance". In closing submissions, counsel invited the Tribunal to find that on the evidence "the sudden disclosure of the existence of the Hore Report" was a reason for withdrawal of cover. He relied on the letter from Ms Mooney dated 26 October 2020, her evidence in her witness statement at para 4(b)((xii) para and the email from the brokers dated 16 November 2020. Mr Qureshi argued that Ms Mooney was either aware of the Hore Report or should have been aware of it – and relied on the evidence of Mr Daggett in that respect. It was inconceivable that Mr Hammond did not hand over the Hore Report to Ms Mooney. In his closing submissions, Mr Qureshi described Ms Mooney as being "curiously defensive" about the issue. She had blamed Mr Stainer, but this was plainly not correct.

*Conclusions*

77. For these reasons, and to end the controversies, it was submitted that the time had come for a new Manager.

## The Third Respondent's submissions

78. In her closing submissions, the Third Respondent confirmed she opposed the application to extend Ms Mooney's appointment. She relied in particular on (i) failure to disclose documents, (ii) the employment of Mr Cobrin as 'local representative' and (iii) the inflation of invoices. As an alternative, Ms Williams sought an amendment of para 48 of the 2018 Management Order and/or for the Tribunal to order Ms Mooney to release the documents Ms Williams had sought.

## The Tribunal's Decision

*Insurance*

79. The first issue relates to the circumstances in which insurance cover for the premises lapsed on 12 October 2020. It is self-evidently a serious problem that the premises were not covered by an insurance policy between October and December 2020. Ms Mooney was obliged to maintain cover under para 33 of the 2018 Management Order and if cover had been lost for a significant period "on her watch", this was undoubtedly a substantial possessable ground for refusing to extend her appointment.

80. Before turning to the two main issues raised about insurance, it is first necessary for the Tribunal to identify the reasons why cover was allowed to lapse and why alternative insurance proved impossible to secure. Mr Qureshi focussed on two contributory factors, namely publicity and the Hore Report. Mr Carr invited the Tribunal to find there were at the very least a much wider range of factors.

81. On this, there are essentially three pieces of documentary evidence from third parties, namely the Aviva Report, the St Giles email of 16 November 2020 and AJ Gallagher's email of 18 November 2020. The Aviva Report lists "negative risk features" of litigation, enforcement notices issued by the fire authority, structural damage, various issues relating to Property Owners Liability, escape of water risk, subsidence and 17 other "poor risk features". The St Giles email refers to an "endless" list of factors but highlights fire enforcement notices, the Hore Report and the poor standard of the commercial areas. The AJ Gallagher email mentions the "extremely large fire risk posed to the property due to the commercial area". Considering this evidence as a whole, it is clear the adverse publicity from the Shepway Vox website article was not a contributing factor to loss of cover (or failure to secure new cover). In any event the website item appears to have been posted on 4 November 2020, some two months after Aviva raised concerns in their report of 2 September 2020 and three weeks after insurance lapsed on 12 October 2020. The Tribunal therefore wholly discounts adverse publicity as a contributory factor. As to the Hore Report, this is mentioned in both the Aviva Report and the St Giles email. But the Tribunal notes that the Aviva report stresses the substance of the structural defects to the Southern Elevation in the Hore Report, rather than the failure to disclose. On balance, the Tribunal finds that any failure to disclose Hore Report timeously, was not a significant cause of the loss of insurance cover. Cover would have been refused in any event due to the "endless" list of other problems at The Grand. Moreover, the Applicant's case about causation makes little sense. If Ms Mooney had in fact disclosed the report in (say) 2018 – the only possible effect is that cover would have been withdrawn in 2018 rather than in 2020. But suffice it to say the Tribunal is satisfied that neither adverse publicity nor failure to disclose the Hore Report materially contributed to the lapse of cover and/or failure to obtain alternative cover in October 2020.

82. In any event, the Tribunal finds Ms Mooney was not at fault for failing to disclose the Hore Report in 2020. It prefers her evidence that she did not see the report until late 2020 and that she disclosed it to the insurers almost immediately that she saw it. This evidence is corroborated by the email of 22 July 2020 and the reference to the Hore Report in the Aviva Report. There was also no obvious motive for Ms Mooney to hide the report before 2020, reveal it to the insurers in late 2020, and then concoct an elaborate explanation about how it came into her hands. The problems with the Southern Elevation were well known, and indeed referred to by the 2018 and 2020 Tribunals. The Respondents' evidence that Ms Mooney had the report before the

Autumn of 2020 is circumstantial, namely that there are documents suggesting Mr Hammond had the Hore Report and that there was a reasonable inference Mr Hammond handed it to her. The Tribunal notes the report was first prepared for Mr Stainer, not Mr Hammond. It finds the email of 3 April 2014, the newsletter of 20 November 2014 and the s.20 notice dated 16 January 2015 are ambiguous about whether Mr Stainer ever provided a physical copy of the report to Mr Hammond – although the former Manager was plainly liaising with the structure engineer at the time. But the "handover checklist" is rather clearer, and the Tribunal prefers the Respondents' submission that this does refer to the Hore Report. Mr Hammond therefore had a copy of the Hore Report in August 2014. But there is simply no evidence at all to suggest he then handed it to Mrs Mooney some four years later – and Ms Mooney of course denies that he did so.

83. As to media coverage, this is considered later in this decision. But suffice it to say that as result of the finding at para 81 above, it is unnecessary to reach a conclusion as to whether Ms Mooney was indirectly responsible for media coverage about Aviva and its Chief Executive. The media coverage did not cause the cover to be withdraw.

84. In short, the criticisms about the Manager's conduct in relation to insurance are not upheld.

*Local management*

85. All the Respondents focussed, to a greater or a lesser extent, on the email of 4 September 2020 and the new arrangements made with Mr Cobrin and Mr Bispham at that time. The Tribunal has no hesitation in finding that the arrangements reached with both were a breach of the 2018 Management Order as varied in August 2020. The new arrangements plainly amounted to the employment of lessees as "local agents":
    (a) Mr Cobrin and Mr Bispham had a legal relationship as agents of Ms Mooney. The email makes it clear they were given power to instruct contractors on the Manager's behalf and they could carry out her management functions in relation to key fobs, leaks etc. Mr Cobrin accepted in evidence that he followed Ms Mooney's directions. He was paid for his services.
    (b) There are other reasons why it ought to have been clear the arrangements amounted to the appointment of "local agents". The email of 4 September 2020 showed they were a modification of the existing relationship with Mr Cobrin – not a fresh one. Indeed, the email expressly stated that Ms Mooney was "extending and formalising" the existing relationship, not changing or replacing it.
    (c) The mischief behind the August 2020 variation is quite clearly set out in para 66 of the 2020 Tribunal decision. This refers to the employment of Mr Cobrin as local agent.

86. How serious a default is it? The Tribunal considers it ought to have been obvious to Ms Mooney that the extended and formalised

arrangements were a breach of the August variation to the Management Order. It agrees that the Manager was "playing within the rules" and rather than the spirit of the order. The email was also sent only a few weeks after the August variation to the Management Order. And it must have been obvious to the Manager that the choice of Mr Cobrin as local agent would be incendiary. The Tribunal stressed in para 66 of its 2020 decision the importance of the Manager not only acting fairly and impartially but maintaining the appearance of fairness and impartiality. Against this, the Tribunal takes into account that para 6 of the addendum to the August 2020 may have left some ambiguity about Mr Cobrin having some vestigial role as "a local point of contact". That paragraph expressly refers to such a role being under para 48 of the 2018 Management Order, which covers Mr Cobrin's role as an officer of AORG (not as an agent of the Manager). But the Tribunal accepts there is some excuse for any misunderstanding.

87. Finally, there is the issue of the Shepway Vox and Private Eye articles. In essence, it is said Ms Mooney was at fault for employing someone as their local agent who leaked things to the media and who was conducting a campaign of vilification against Mr Stainer. The Tribunal repeats what was said in para 66 of the 2020 Tribunal, that 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" and that "his employment did affect the appearance of the Manager's impartiality and fairness." Although the Tribunal considers the issue of media leaks has been given disproportionate significance (it is hardly news that disparaging and occasionally hurtful things are said anonymously on the internet or in Private Eye), it repeats what it has previously said about the choice of Mr Cobrin as the Manager's 'eyes and ears'. The answer to this was not to employ Mr Bispham as local agent as well – two wrongs do not of course make a right.

*Answers to enquiries*

88. The Third Respondent raised a discreet point about answers to routine enquiries. The Tribunal will deal with this briefly. Plainly the early enquiries by Ms Williams were disproportionate and no fault can be attributed to the Manager in failing to answer these completely. As to the later enquiries, these were under the umbrella of s.22 Landlord and Tenant Act 1985. The proper way to deal with any breach of s.22 of the 1985 Act is under that legislation and not by way of a variation under the s.24(9) of the 1987 Act.

*Discretion*

89. The Tribunal exercises its discretion under section 24(9) to extend Ms Mooney's appointment rather than to discharge her at this stage. It takes the following considerations into account:
    (a) Ms Mooney enjoys the confidence of a large number, if not a majority, of residential lessees.

(b) It agrees with Mr Carr that significant progress has been made in resolving the intractable management difficulties at The Grand, and in progressing the recovery of arrears.
(c) The Manager has been subjected to an almost unprecedented sequence of challenges and litigation and has evidently dealt with them robustly. In these proceedings alone, those challenges included *inter alia* the repetition by Mr Foley of allegations of impropriety raised (and rejected) in the 2020 Tribunal proceedings and allegations made by Ms Williams in relation to financial irregularities (which were eventually not pursued).
(d) A period of continuity in management is plainly needed. We cannot have a cycle of changing management (let alone Tribunal appointed Managers) every 2-3 years. The Grand cries out for stability.
(e) The conclusion above that Ms Mooney is not at fault in relation to the withdrawal of insurance cover in October 2020. Indeed, credit should be given to the Manager for securing insurance cover for The Grand against an unpromising background late last year.
(f) Against all these considerations, the Tribunal balances the employment of Mr Cobrin and Mr Bispham as local agents. The Tribunal has found it was wrong to have employed them as local agents, and that the retention of Mr Cobrin was particularly unwise. But this consideration is subject to two *caveats*. First, the Tribunal accepts that the error proceeded from a misunderstanding of the 2018 Order, rather than any deliberate breach. Secondly, it is worth repeating that the previous arrangement with Mr Cobrin was the *only* point of criticism made by the 2020 Tribunal in proceedings which involved wide-ranging and (often unacceptable) attacks on Ms Mooney professional conduct. In the context of management of a complex property undertaken in hostile circumstances, the relationship with local agents is a relatively subsidiary matter. Understandably, the Respondents have fixed on the one point of criticism in the 2018 Tribunal decision and developed it as the central point in a renewed attempt to remove Mr Mooney. But in management terms, the employment of local agents is (in our view) not something central to Ms Mooney's management functions or the purposes behind the 2014 and 2018 Management Orders.

Ultimately, the Tribunal considers the reasons for retaining Ms Mooney significantly outweigh the last consideration.

**Other variations**

90. The Applicant suggested that some limit be placed on Mr Stainer's ability to represent Hallam Estates. In view of the Administration Order, the Tribunal considers no useful purpose would be served by making that variation.

91. The Applicant also tentatively suggested a variation of the Management Order to further clarify the scope of the prohibition on the employment of local agents. The Tribunal does not think this is necessary. It is sure that the Manager now well understands she should not pay lessees to undertake any of her management functions at The Grand, and that she should not use or employ such lessees as local agents, "eyes and ears" or the like - whether formally, informally, paid or unpaid. This practice needs to stop. There is of course nothing to prevent AORG fulfilling its functions set out in para 48 of the 2018 Management Order.

## Conclusions

92. For the reasons given above, the Tribunal therefore extends Ms Mooney's appointment for three years to 8 January 2024.

Mark Loveday
28 February 2021

## 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.

## APPENDIX I

## Extract from 2018 Management Order

### The Manager and Powers

3(o) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform herself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant. [*For the avoidance of doubt, that servant or agent may not be a tenant or other person or body with an interest in the property*]*.

*Words in brackets added by Tribunal on 11 August 2020.

### The Manager

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

### SCHEDULE OF MANAGER'S FUNCTIONS AND POWERS

### Administration and Communication

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 [sic] this clause in the first instance to the attention of all Tenants.

## APPENDIX II

## Email from Westbury Residential to residents 4 September 2020 (9.58am)

*(Personal information redacted)*

Dear Grand Resident

After nine months of having Peter Cobrin as my formal "eyes and ears" in the building which has worked very well in, in for example, co-ordinating Mike Henderson's excellent work as our cleaner/maintenance man; planning, implementing and rolling out the fob system; managing leaks and other inter-flat problems and lots of other issues; I am extending and formalising the onsite support as follows:

(a) The role is now being split between Peter, along with his role as AORG's chairperson, and Steve Bispham of the Marlow Suite, and, together, reporting directly to me, they will be well placed to react to resolve issues very quickly.
(b) Their role is to provide the first point of contact for all residents for day-to-day maintenance issues, including emergencies, and to ensure that especially around plumbing and electrical problems, we use one of our approved contractors.
(c) They will be able to instruct contractors for any urgent work.
(d) They will also proactively monitor the building for problems such as faulty lights, trip hazards, seized water stop-cocks etc.
(e) We have established a dedicated email address for the team: info@[XXXXXX]. Emails sent to this address go to both Peter and Steve who will respond from their emails: peter@XXXXXX and steve@XXXXXX. Unless its urgent, please use the email address first so that we have a paper trail.
(f) Their respective contact phone numbers are:
    - Peter [XXXXXX]
    - Steve [XXXXXX]

I am sure this arrangement will work well and having 2 residence will make it easier when you need support 'on the spot'.

Kind Regards

Alison Mooney MIRPM AssocRICS

Director

Westbury Residential ltd