FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/45UC/LAM/2021/0003
Property	**:**	22 The Steyne Bognor Regis PO21 1TP
Applicant	**:**	Emma Louise Penhaligon
Representative	**:**	Bate and Albon Solicitors
Respondent	**:**	Robert Brian Mortlock
Representative	**:**	Wannops LLP
Interested persons	**:**	Keith Nigel Mortlock (Lessee of Flat 2) Sarah Jane Elliott (Lessee of Flat 3)
Type of Application	**:**	Appointment of Manager- section 24 of the Landlord and Tenant Act 1987
Tribunal Member(s)	**:**	Judge J Dobson Mr S Hodges FRICS Ms P Gravell
Date of Hearing	**:**	24th August 2021- remotely as video proceedings
Date of Decision	**:**	3rd September 2021

DECISION

Summary of the Decision

1. **The Applicant's application for the appointment of a manager for is granted.**

2. **Mr Gary Pickard is appointed as Manager of 22 The Steyne Bognor Regis PO21 1TP from 6th September 2021 until 31st August 2024 on the terms set out in the Management Order dated 2nd September 2021 and pursuant to section 24(1) of the Landlord and Tenant Act 1987.**

3. **The Applicant's application for an order that the Respondent's costs of the proceedings may not be recovered from the Lessees through the service charge is granted.**

4. **The Respondent shall repay the £300 fees paid by the Applicant within 28 days.**

Background, titles and the Property

5. The Applicants made an application dated 11th March 2021 , for an Order appointing a manager for which consists of 22 The Steyne, Bognor Regis, PO21 1TP ("the Property") in accordance with section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act"). The Applicant had served a section 22 Notice dated 25th January 2021 on the Respondent landlord. An application was also made pursuant to section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") that the Respondent's costs of these proceedings should not be included in the service charge.

6. The Applicant is the lessee of the ground floor flat within the Property. The Respondent is the freehold owner of the Property. The Respondent's title is registered with title number WSX41045 and the bundle includes that title. The Applicant and the two Interested Persons (collectively "the Lessees" and singular "Lessee") hold long leases ("the Leases") of the flats ("the Flats" collectively or "Flat" singularly") within the Property. The bundle also includes the numbers of the leasehold titles. Ms Sarah Jane Elliott, the Lessee of the second floor flat, Flat 3, is said to support the application. The other Interested Person was previously described as being in bankruptcy, but the best information provided at the hearing indicated that he has subsequently been discharged. He has not responded to the application.

7. A sample lease ("the Lease", both individually and collectively with that below) specifically of the Applicant's flat and dated 6th May 1988, has been provided with the application made. That Lease was for a relatively short term, being ninety-nine years from 29th September 1987. The term has subsequently been extended pursuant to a New Lease (individually "the New Lease" and collectively with the sample original lease "the

Lease") dated 28th September 2018. The provisions relevant to this application remain the same in the New Lease as they did in the sample lease, such provisions being "Incorporated Terms" save where modified, which they have not been in respect of the covenants of the parties in any manner impacting on this application.

8. The date by which the section 22 Notice required steps to be taken in respect of such asserted breaches as were said to be remediable, 5pm 25th February 2021, had expired by the date of this application. The Notice required five such steps to be taken as set out, having asserted six relevant breaches and other relevant circumstances.

9. The photographs provided to the Tribunal indicate the Property to be a three-storey Georgian or Victorian townhouse topped by a "butterfly roof" with a lead valley gutter in the middle and other evidence refers to an internal gutter running from that enclosed within the roof void. The Property is divided so that there is one of the three flats on each floor, together with communal areas.

10. The Property is currently managed by the Respondent, with the assistance since April 2021 of one of his sons, Colin Mortlock, and his granddaughter's fiancé, Joel Anderton.

11. The Applicants nominated Mr Gary Pickard as the proposed manager ("the Manager"), who has prepared a management plan.

The History of the case

12. Directions were first given on 20th April 2021, including listing the application for hearing on 18th June 2021. The hearing was to be conducted remotely as video proceedings. The Respondent was not at that time represented.

13. However, an application was made by the Applicant's representatives for the proceedings to be stayed for a period of 2 months. The application was supported by the Respondent, who was by then represented. The Tribunal extended the time for compliance with Directions such as to build in a period in which the parties could investigate potential resolution of the application. The hearing date was re-listed for 24th August 2021.

The Hearing

14. The hearing was held remotely as video proceedings as envisaged. The Applicant was represented at the hearing by Mr Jeremy Donegan and the Respondent by Ms Ros Edwards, both solicitors. The Tribunal is grateful to both for assistance in this matter.

15. In addition, the hearing was attended by the Applicant and by Mr Gary Pickard, the proposed Manager. The Tribunal is also grateful to them for

their evidence. There was no attendance by the Respondent nor the Interested Persons.

16. The Applicants produced a bundle in PDF form of 271 pages in the main PDF and 78 in the smaller part. The smaller part contains survey reports by surveyors instructed on behalf of each of the Applicant and the Respondent, including photographs.

17. This is perhaps as good a point as any to record that no permission was given, or indeed sought, to rely on expert evidence in these proceedings. There is substantial agreement between the experts, although some disagreement as to whether damp to the Property arises from the valley gutter or a combination of that and the slate roof areas themselves.

18. Two short video clips, showing part of the roof to the Property, were also provided.

19. The Tribunal did not inspect the Property, the Directions having stated that the Tribunal would not do so, no application having been made that the Tribunal should do so and the Tribunal being satisfied that it could properly consider this matter in the absence of an inspection in this instance.

20. Mr Donegan provided a Skeleton Argument dated 20th August 2021. That attached a form of order appointing a manager. Mr Donegan identified the breaches alleged by the Applicant**.** He additionally mentioned section 24(2)(b) in the context of agreement between the parties and examples were provided as attachments of decisions of the London region and the Southern of the Tribunal so doing- whilst those are interesting in themselves and merit appropriate respect, they are not binding on this Tribunal. In addition, various extracts from the RICS Residential Management Code (3rd Edition) ("the Code") were annexed.

21. Ms Edwards informed the Tribunal that the application for a manager to be appointed was not opposed. That is relatively rare. There was no dispute between the parties as to appointment of Mr Pickard as the Manager in the event of appointment of such a manager and the Tribunal determining Mr Pickard to be suitable as the appointee. She anticipated that the matter to address would be the terms of the Order.

22. However, an issue did arise as to the ground for appointing the Manager. The Tribunal checked whether the Respondent accepted the alleged breaches. Ms Edwards stated that he did not.

23. The Tribunal noted that the Respondent had not adduced any evidence in relation to any of the asserted breaches. Ms Edwards submitted that in light of the misunderstanding, the Respondent should be permitted to serve witness evidence, which Mr Donegan opposed, arguing that if the Respondent wished to deny the breaches he should have done so.

24. The Respondent's position was that an agreement had been reached between the parties that the Manager be appointed, no more and no less, and effectively the appointment should be made on the basis of that agreement. Ms Edwards did not accept that the Tribunal should consider the asserted breaches. No evidence was provided as to the specific terms of the agreement between the parties.

25. The Applicant's position was that she had never said that she did not continue to assert the breaches, rather those grounds for the Order remained pursued, although also other circumstances. Accordingly, Mr Donegan' assertion was that the Tribunal should proceed on the basis of those breaches. He contended that whilst the appointment of the Manager had been agreed, it was never proposed and agreed that the asserted breaches would be dropped. He denied that the Applicant was estopped from raising those.

26. The Tribunal considered the issue in private consultation. The Tribunal determined having heard the submissions that there had been something of a misunderstanding between the parties. The Tribunal did not doubt that the Respondent considered that having agreed to a Manager being appointed, that was that. However, any such agreement did not preclude the need for the Tribunal to find an appointment to be appropriate.

27. The Tribunal did not find that the parties had specifically agreed that the asserted breaches would not be raised such that the Applicant was estopped by the agreement from continuing to advance those. There was no evidence to support such a finding. Indeed, the clear assertion of breaches in the Applicant's representative's Skeleton Argument gave a clear indication that the Applicant believed that the breaches could continue to be advanced and nothing supported any contrary agreement having been reached.

28. The application for the Respondent to be able to serve witness evidence, and necessarily to adjourn the final hearing, was refused.

29. Ms Edwards was offered the opportunity to test the evidence of the Applicant by way of cross-examination if the evidence was not accepted. She accepted that offer. The evidence given by the Applicant, both written and in response to cross- examination, is referred to below where the Tribunal sets out its findings. For the avoidance of doubt, a written witness statement by the Applicant was included in the bundle.

30. So too was a witness statement of Sarah Elliot, the lessee of Flat 3. However, as mentioned above, she was not in attendance. Accordingly, the evidence of Ms Elliot was not able to be tested in cross-examination in the manner that the evidence of the Applicant could be. The Tribunal records that where such evidence related to breaches which were not admitted by the Respondent, the Tribunal was able only to give limited weight to Ms Elliot's evidence in light of the inability to test the evidence.

The Law

31. The relevant statutory provisions in respect of this application are found in s24 of the 1987 Act. The provisions read as follows:

> **24 Appointment of a manager by [a …….tribunal]**
> (1) [The appropriate tribunal] may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this part applies-
> (a) Such functions in connection with the management of the premises, or
> (b) Such functions of a receiver,
> or both, as [the tribunal] thinks fit.
>
> (2) [The appropriate tribunal] may only make an order under this section in the following circumstances, namely-
> (a) Where [the tribunal] is satisfied-
> (i) that [any relevant person] either is in breach of any obligation owed by him, to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
> (ii) …..
> (iii) that it is just and convenient to make the order in all the circumstances of the case;
> (ab) where [the tribunal] is satisfied-
> (i) that unreasonable service charges have been made, or are proposed or likely to be made, and
> (ii) That it is just and convenient to make an order in all the circumstances of the case;
> (aba) where the Tribunal is satisfied-
> (i) That unreasonable variable administration charges have been; and
> (ii) That it is just and convenient to make an order in all the circumstances of the case made, or are proposed or likely to be made,
> (abb) where the tribunal is satisfied-
> (i) That there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and
> (ii) That it is just and convenient to make the order in all the circumstances of the case;]
> (ac) where [the tribunal] is satisfied-
> (i) that [any relevant person] has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and
> (ii) that it is just and convenient to make the order in all the circumstances of the case;]
> or
> (b) where [the tribunal] is satisfied that other circumstances exist which make it just and convenient for the order to be made.

32. Certain of the words and phrases are explained or expanded upon in subsequent subsections of section 24 of the 1987 Act. Later subsections address the extent of the premises and the extent of the powers of the manager.

33. Accordingly, there is essentially what is often described as "a threshold criterion" for the making of an order that there is a breach made out, although equally there can be an order if relevant "other circumstances" have arisen, without a necessity for a breach to be found. If a breach is found that breach can be only one of many alleged and can be modest.

34. The fact of there being a breach or there being other circumstances does not mean that an order must be made, simply that one then may be made. It then falls to the Tribunal to consider whether the making of an order is just and convenient. Several examples of factors which may support the making of an order or may support not making an order are identified in case authorities and other learned sources. Any specific decision must necessarily consider the interplay of any relevant factors in the particular case.

35. The principle of appointing the Manager and the question of the appointment of a specific proposed manager are separate issues.

36. The opening provision of section 24 of the 1987 Act enables the Tribunal to give to the Manager such powers as it considers appropriate, not limited to those given to the freeholder under the Lease.

37. The relevant code of practice referred to in section 24 of the 1987 Act is the Royal Institution of Chartered Surveyors Service Charge Residential Management Code 3rd Edition ("the Code"). The Code provides for a range of matters relevant to the management of a property such as this one. The Code states, and in this regard the Tribunal simply sets out some relevant examples of provisions, that (Part 4.1) "You should manage the property on an open and transparent basis", (4.2) You should respond promptly to reasonable requests from leaseholders for information or observations relevant to the management of the property indicating a timescale by which the request will be dealt with. Relevant information may be provided, if the lease/tenancy agreement obliges or if it is reasonable". With particular regard to financial matters, the Code addresses that in detail in Part 6. Service charges are covered in Part 7.

The Lease provisions

38. Under clause 5. of the Lease, the First Respondent is responsible to the Lessees to maintain and repair.

39. The obligations on the Respondent are said under clause 5. to be subject to the Lessee's "contribution and payment". However, the Tribunal determined that, whilst a number of sub-clauses of clause 5. make reference to that, the Lease is not worded in such a manner as to create a condition precedent. As the point was not argued on behalf of the Respondent, the Tribunal does not seek to say more about the potential issue.

40. The obligations in clause 5. require, amongst other matters the Respondent:

"(i) Subject to the contribution and payment as hereinbefore provided to maintain and keep in good and substantial repair and condition:
(a) the main structure of the Building including the foundations and roofs thereof with its gutters and rainwater pipes
(b) all such water pipes drains and electric cables and wires in under or upon the Estate as are enjoyed or used by the Lessee in common with the lessees of the other flats in the Building
(c) The main door and frames entrance hallway passageway landing staircases the overhanging storeage room on the first floor and the rear year containing the dustbin area enjoyed or used by the Lessee in common as hereinbefore provided and the boundary walls and fence s of the estate

(ii) Subject as aforesaid in every fifth year of the said term to decorate the exterior of the Building (including all windows and window frames and the front (and rear if any) doors of the flats or of the Building and the said entrance hallway passageway landing and staircases the overhanging storerage room on the first floor and the rear year in manner in which the same are at the time of this demise decorated or as near thereto as circumstances permit

(iii) Subject to aforesaid to keep clean and reasonably lighted so far as possible the hallway passageway landing staircases the overhanging storeage room on the first floor and other parts of the Building so enjoyed by the Lessee in common as aforesaid

.....

(vi) At all material times during the said term (unless such insurance shall be vitiated by any act or default of the lessee or the Lessee or occupier of any other flat in the Building) to insure and keep insured the Building and any other erections on the Estate against loss or damage by fire and such other risks as the Lessor may reasonably think fit in the name of the Lessor and through such agency as the Lessor shall nominate (the interest of the Lessee and a y mortgage to be noted in required) to the full reinstatement value thereof and whenever required to produce to the Lessee the policy or policies or such insurance and the receipt for the last premium of the same and in the event of the Building or any part thereof being damaged or destroyed by fire as soon as reasonably practicable to obtain such consents and permissions as are reasonable to permit the reinstatement of the Building and to lay out the insurance monies in the repair rebuilding or reinstatement of the Building or the appropriate part thereof

.....

41. THE Lessor hereby further covenants at clause 6. with the Lessee as follows:-

(i) That the Lessee paying the rent hereby reserved and performing and observing the several covenants conditions and agreements herein contained and on the Lessees part to be performed and observed shall and may peaceably and quietly hold and enjoy the flat during the said term without any lawful interruption or disturbance from or by the Lessor or any person or persons rightfully claiming under or in trust for him

....."

42. The Lessee agreed by clauses 2. and 3. to comply with the obligations under the Lease. Various specific obligations are detailed in sub- clauses of clause 2, including payment of the rent. Clause 3. requires the Applicant to pay, by way of additional further rent, a one- third share of the expenses incurred by the Respondent in the "repair maintenance and renewal" of the Property, the communal areas and fixtures, the insurance of the Building and the provision of services and "other needs of expenditure" as set out in the fourth schedule, collectively "the service charge".

43. Sub-section (a) and onwards of clause 3 contains various specific terms and provisions in respect of the service charge as follows:

(a) The amount of the service charge shall be ascertained and certified by a Certificate (hereinafter called "the Certificate" signed by the Lessor's Auditors (at the discretion of the Lessor) acting aw experts and not as Arbitrators annually and as soon after the end of the Lessor's financial year as may be practicable and shall relate to such year in manner hereinafter mentioned
(b) The expression "the Lessor's financial year" shall mean the period from the twenty fifth day of March in each year to the twenty-fourth of March in the next year or such other annual period as the Lessor may In his discretion from time to time determine as being that in which the accounts of the Lessor either generally or relating to the Building shall be made up
(c) A copy of the Certificate for each such financial year shall be supplied by the Lessor to the Lessee
(d) The Certificate shall contain a summary of the Lessor's said expenses and outgoings incurred by the Lessor during the Lessor's financial year to which it relates together with a summary of the relevant details and fixtures forming the basis of the service charges
(e) The annual amount of the service charge payable by the Lessee as aforesaid shall be one third of the said expenses and outgoings incurred by the Lessor in the year to which the Certificate relates
(f) .....
(g) The Lessee shall if required by the Lessor with every payment of rent reserved hereunder pay to the Lessor such sum in advance and on account of the service charges as the Lessor or his Accountants or Managing Agents (as the case may be) shall specific at their reasonable discretion to be a fair and reasonable interim payment
(h) Not more than two months after the signature of the Certificate the Lessor shall furnish to the Lessee and account of the service charge payable by the Lessee for the year in question due credit being given or all interim payments made by the Lessee in respect of the said year and carried forward from a previous year and upon the furnishing of such account showing such adjustment as may be appropriate there shall be paid by the Lessee to the Lessor within fourteen days the amount of the service charge as aforesaid or the balance.....

44. The expenses to which the Applicant must contribute are explained in clause 3.(f) and relate, as might be expected, to the matters which the Respondent is obliged to attend to.

Evidence and Findings in relation to matters in dispute

45. The Applicant contends the following breaches by way of grounds for the appointment of the Manager, namely that the Respondent, adopting the wording of the Skeleton Argument:

(a) has not produced any service charge accounts for the years ended March 2007 to March 2020,
(b) did not demand any service charges for the Flat between February 2006 and 5 May 2021,
(c) has failed to comply with his repairing obligations,
(d) has failed to comply with his decorating obligations,
(e) has failed to investigate water ingress in Flats 1 and 3,
(f) did not produce insurance details/documents when requested to do so,
(g) has not provided peaceable and quiet enjoyment of the Flat,
(h) ignored correspondence,
(i) made no attempt to manage the Building between February 2006 and the service of these proceedings, and
(j) has breached parts 7.7, 7.10, 9.1 and 12.2 of the RICS Service Charge Residential Management Code, 3rd Edition ('the Code').
(k) has breached clauses 3(d), 5(i)(a) and (c), 5(ii), 5(vi) and 6(1) of the Lease.

46. The most significant breaches are asserted to be the failure to maintain/repair the roof and the internal common ways and the failure to investigate the water ingress in Flats 1 and 3. Damage is said to have been caused to those flats in consequence.

47. As set out above, it was not admitted on behalf of the Respondent that those breaches have occurred.

48. Accordingly, the Tribunal was required to determine whether any or all of those breaches had been established, not least because of the potential relevance to the purposes of the Management Order and the matters to be addressed by the Manager in fulfilling those.

49. The Applicant give written evidence of the various asserted breaches in her written witness evidence bearing a statement of truth. The Tribunal does not repeat that evidence in detail but rather turns to those matters challenged in cross examination by Ms Edwards.

50. Ms Edwards put to the Applicant that it was wrong to say that there had been no repairs. She put that when the Lease was extended, it was identified that expenditure had been incurred, albeit no demands had been served and the costs had not been recovered. The Applicant denied any work had in fact been undertaken, referred to the invoices having been raised by Kevin Mortlock and asserted that they were a fabrication. She added in response to questions from the Tribunal that there had simply been word documents, including reminders for old letters allegedly sent, but at no time backed up with any invoices or receipts.

The Applicant confirmed in response to cross-examination that she stood by her written statement about the demands.

51. Ms Edwards suggested that was not correct and that the reason the sums had not been pursued lay with errors in the demands made. The Applicant maintained her position that no work had been undertaken, adding that the invoices were referred to at the end of the negotiation and after the premium for the lease extension had been agreed. However, Ms Edwards asked the Applicant about water ingress, first putting that had arisen only in 2020, which the Applicant said was incorrect because there had been a previous issue, which she accepted had been dealt with, or at least that she had been told that it had been, which the Tribunal noted indicated that there may well have been previous work to the Property.

52. The Tribunal found on balance that some works to the roof had been undertaken by or on behalf of the Respondent in the past. Other evidence as to the nature of such repairs supported that finding. However, the Tribunal found the Applicant clear and cogent in her evidence as to the invoices at the time of the extension of the Lease and accepted that evidence and that water ingress to the Property had not simply been recent. Accordingly, the Tribunal accepted a small amount of previous maintenance work. However, no more than that and not nearly enough of it.

53. The Applicant's written case included information as to some action taken by the Respondent in 2021 to address the repairs works, by way of commencing a section 20 consultation process. The Tribunal considers it important to so record that action. The Tribunal finds that the Respondent, through his son Colin Mortlock, and Joel Anderton, who have been assisting the Respondent during 2021, did start that consultation process, if imperfectly. However, no actual work had yet followed.

54. The Tribunal therefore found breach (c) to be made out.

55. Ms Edwards also suggested to the Applicant that there was inconclusive evidence as to the reason for water damage to her flat. The Applicant said in response that her tenant, who was not present, told her that during rain, water ran down the walls of the Applicant's flat and otherwise disagreed. The Applicant stated in response to re-examination that the water penetration was to the bathroom and the central wall .

56. The Tribunal found that as at the hearing there was insufficient evidence on which to satisfactorily find whether the water penetration into the Applicant's flat emanated from the roof area as opposed to from plumbing or similar leaks within the flat above. The Tribunal accepted that the evidence was not as clear as the Applicant asserted.

57. That said, the asserted breach was as to a failure to investigate.

58. The Tribunal finds breach (e) to be made out for the period up to the instruction by the Respondent of Mr Clive Hitchings, MRICS, at which time the Respondent did investigate.

59. For the avoidance of any possible doubt, the finding on the one hand by the Tribunal that the Respondent failed to appropriately investigate water ingress into the Property and on the other hand any finding which may be made in due course by any Tribunal or other body as to the cause of damage to the Applicant's flat specifically are separate matters.

60. The Tribunal does not consider it appropriate to make any determination of the extent, if any, to which any damage to the Applicant's flat may have been caused by the agreed damage to the gutter to the roof or by other defects to the Property as a whole or indeed to Flat 2 in particular. The decision as to appointing the Manager does not turn on that. It is left to another time, should there be one.

61. Ms Edwards did therefore make some headway, in spite of having no contrary evidence to put to the Applicant. However, on the whole the challenges were not successful and in respect of most of the limited disputed matters, the Applicant's case was accepted.

62. Ms Edwards did not advance any other issues in cross examination. Insofar as there were matters not put to the Applicant, in relation to the asserted breaches (a) to (k) inclusive above, the Tribunal accepts the Applicant's evidence in full. That relates to all such asserted breaches except (c) and (e) referred to above.

63. The Tribunal does also find, considering it appropriate to make a finding about the matter, that the insurance obtained by the Respondent, at least prior to the current policy, was for a house let out and not for a building containing self-contained flats let on long leases.

Consideration of whether grounds for an appointment have been made out

64. The findings made are such that the Applicant has stepped over the low threshold for the making of an order. The ground in sections 24(2)(a)(i) (a) and (ac) have been made out.

65. In respect of section 24(2)(b) the principle "other circumstance" suggested is the fact that the Respondent agrees to the appointment. The Tribunal accepts that in principle the Respondent landlord agreeing that there should be a manager appointed may be an "other circumstance".

66. The Tribunal determines that in this instance, the Tribunal does not need to consider whether "other circumstances exist which make it just and convenient for the order to be made" as a threshold ground for the potential making of an order because elements of section 24(2)(a) have been made out. A number of relevant breaches have been found.

67. However, the Tribunal observes, and in doing so in no way seeks to criticise the previous decisions to which Mr Donegan referred the Tribunal, that if the only threshold ground on which an order is made is that it is just and convenient because the parties agree, involving no breaches or other circumstances being found to arise, a number of later difficulties may be faced. Those may include identification of the purposes of the appointment of the Manager and thereby enabling establishment of whether the Manager is achieving those and at what point they have been achieved. There may also be relevance to whether the Order should or should not appropriately continue at any given point.

68. As the threshold had been cleared, in principle an appointment of a manager could therefore be made, provided that was determined to be just and convenient. The next question for determination by the Tribunal was one of whether the appointment of a manager was just and convenient.

Consideration of whether it is just and convenient to appoint

69. A whole array of factors may or may not make it just and convenient to appoint a manager, as noted above.

70. Irrespective of agreement between the parties as to an appointment, the appointment of a Manager remains a matter for the Tribunal, the Manager being a Tribunal- appointed officer. Both the decision to appoint applying the relevant test and the identity of the specific appointee must be considered and determined by the Tribunal, determinations which cannot be delegated to the parties. Any order is not simply a consent order endorsing terms the parties have reached between themselves.

71. Most notably in relation to justness and convenience, serious breaches have been found of covenants entered into by the Respondent in relation to the Building and over a significant period of time, indeed some years.

72. The section 22 Notice did not prompt any response from the Respondent, whether in writing or by way of discernible action. It was entirely reasonable, not to say almost inevitable, that the proceedings followed.

73. It can properly be said that the fact that a section 22 Notice gives a time within which the given applicant requires actions to be taken, does not of itself mean that such time is a reasonable one. However, a landlord is able to take such a point in responding to the Notice, assuming that it does so respond.

74. The Tribunal also considers that to the extent items of work had remained unresolved the Respondent cannot objectively reasonably have failed to have been unaware. Attendance at the Property, whether by the Respondent or anyone assisting him, would have revealed those

works which had not been completed. The Respondent cannot, the Tribunal finds with no difficulty, have considered that he had dealt with everything that he should. He objectively knew that matters required attention. He certainly did not deal with them until this year. There can be no argument that related to lack of funds from the Lessees or was otherwise affected by any failings on the part of the Lessees, given that no sums were demanded of them.

75. It is right to say that there has plainly been progress made as compared to the position at the time of the section 22 notice. Some steps have been taken in seeking to manage the Property by way of the two gentlemen assisting the Respondent with that, if imperfectly. In addition, the detailed report of Mr Clive Hitchings MRICS has been obtained, Ms Edwards submitted to facilitate the initiation of the section 20 consultation process, and a section 20 consultation process has been commenced in relation to the major works required. Ms Edwards maintained the assertion that the water ingress was relatively recent, although that runs contrary to the finding now made by the Tribunal.

76. In appropriate circumstances, the Tribunal may find that sufficient progress has been made that it is no longer appropriate to appoint a manager. However, in this instance the progress made is too little and too late.

77. Equally, there is no evidence that the Respondent would have undertaken the works which have been carried out in the absence of the proceedings being issued. Whilst the motivation for works being undertaken is not directly relevant to the fact of remedy of the breach or lack of it, it is significant in relation to the consideration of future management of the Property.

78. So too is the Respondent's apparent ill- health. The Tribunal sympathises with the Respondent about that. The fact that there is regrettably no evidence that will resolve in the near future is rather more directly relevant because of rendering significant change to management unlikely. The Tribunal finds that ongoing management would be most likely to be undertaken by Colin Mortlake and Joel Anderton.

79. The Tribunal may in a particular case find that despite considering the undertaking of works and the remedy of other breaches to be motivated by the issue of proceedings, nevertheless the Tribunal can be sufficiently confident about future management. However, inevitably an assertion by a landlord in such circumstances that the future management will be appropriate, will be examined with care.

80. The involvement of other persons, Colin Mortlake and Joel Anderton, with the management of the Property has been a step forward, although they are not professional managing agents, which latter approach would have better allayed fears.

81. In other circumstance, the solution may have been the appointment of a professional managing agent, the fees for whom would be chargeable pursuant to the Lease. The Tribunal would ordinarily expect the parties to reach alternative arrangements rather than resorting to an appointment by the Tribunal.

82. The Tribunal is particularly mindful that the Property is relatively small. There are only the three flats and so any cost will be borne by a small number of contributors. If there had been an alternative to the appointment of a manager and at lower cost whilst still providing experienced management, that would have required assessment of the advantages and disadvantages, as against the appointment of a manager. Ms Edwards raised the question of whether the cost of a manager was proportionate, although her client had of course agreed to the appointment and she accepted he agreed that the appointment was just and convenient.

83. The Respondent has not appointed, taken steps to appoint or even proposed the appointment of a managing agent. There is no suggestion that the Respondent would do so. Neither the Applicant nor the Tribunal can attend to such an appointment.

84. The only current alternative arrangement to the appointment of the Manager other than appointing a managing agent would be to continue with Colin Mortlock and Joel Anderton. However, that is an informal arrangement which has been in place for a relatively short time, which could end at any time and where the Tribunal has been given no information stating that the two wish to continue to assist on an ongoing basis and will continue to assist and indeed where the Respondent prefers a Tribunal-appointed manager.

85. There is also at least some evidence that the gentlemen are not sufficiently conversant with matters requiring addressing when managing a building. The concern expressed by Mr Pickard as to fire risks and potential steps required- see below- do not appear to have been matters identified by them as requiring attention. Given the fundamental safety of occupiers involved, an understanding of requirements and how to deal with those is of vital importance.

86. The Tribunal did determine that inadequate management had occurred for several years. The Tribunal did not consider that recent attempts to go further towards fulfilling the First Respondent's obligations to undertake and/or facilitate the provision of works to be anywhere near sufficient to alter the outcome of this case.

87. Having consider the above circumstances, the Tribunal finds that the Applicants have comfortably demonstrated it to be just and convenient for there to be a manager appointed.

Decision to appoint a manager in principle

88. Consequently, in relation to the matter of appointing a manager in principle, the Tribunal does find it just and convenient to appoint a manager for the Property, as conveyed to the parties at the end of the hearing.

Appointment of Mr Gary Pickard

89. The principle of appointing a manager and the appointment of the specific manager are different matters. It does not necessarily follow that the first will lead to the second. The Tribunal must be satisfied that the particular manager proposed is suitable to be so appointed in light of his experience and abilities and his understanding of the role of a manager, together with any other considerations the Tribunal regards as relevant.

90. The Tribunal has determined that Mr Pickard possesses sufficient suitability to be appointed. Importantly, he appears to enjoy the confidence of the Respondent as well as the Applicant. There can be little doubt from the Tribunal's experience that management of a Property is that much simpler, at least initially, where that confidence is held.

91. Mr Pickard was questioned by the Tribunal- as to his property management portfolio; his proposed fees; his intentions in relation to the repair works and prioritising; his handling of money; his intended approach to raising funds, including budgets for the funds required; his professional indemnity insurance and his willingness to accept the appointment.

92. Mr Pickard holds a number of manager appointments already and has held others previously. His first appointment as a Tribunal manager was in 2003. He was unsurprisingly familiar with the process of appointment and such proceedings and with the role of a manager where appointed.

93. Mr Pickard did not consider that a budget for the current year could be set and hence sought the ability to make variable demands. He said that a budget would be prepared for later years. The Tribunal accepted that approach. Mr Pickard was, understandably, particularly concerned about fire safety, a risk assessment and the undertaking of any necessary works. He doubted, for example, that the doors are fire doors. That would be a matter to address as soon as possible, the Tribunal accepted quite sensibly. Mr Pickard was also concerned about under-insurance given the nature of the Property and intended to address that urgently, although he stated that he could not do so until his appointment commenced.

94. The Tribunal determined that Mr Pickard's experience of managing properties was good and ought to enable competent management of the Property. He possessed appropriate information and has experience of the role. The Tribunal was content with his insurance cover, handling of financial matters and complaint process and with his identification of urgent issues to address.

95. The Tribunal is satisfied that Mr Pickard understands the reasons for his appointment and that he is a suitable person to be appointed as Manager of the Property.

96. **The Terms of the Management Order**

97. As mentioned above, the Applicant's representative provided a draft management order, for which the Tribunal is grateful. The Tribunal has considered that.

98. In the event, the Tribunal considered that the wording of the relevant management order should be varied from that draft to the form of order now made. The operative elements are essentially the same, merely differently laid out, and to an extent differently expressed.

99. A draft of the proposed form of Order has been provide to the parties' representatives and their observation in response were taken account of. Certain amendments were made. The Order as finalised and issued has been served on the parties and the Manager. The appointment commences 6th September 2021, running for just under three years to 31st August 2024.

100. The parties are expected to co-operate with Mr Pickard in his management of the Property, in the best interests of all concerned and Mr Pickard is expected to use his experience to manage the Property.

Section 20C Application

101. The question for the Tribunal is whether it is just and equitable to disallow recovery of the costs incurred by the Respondent in relation to the proceedings through the service charge.

102. The Applicant's case was that the costs of the Respondent should not be recoverable. Ms Edwards accepted the Tribunal making an order pursuant to section 20C and did not raise any arguments to the contrary.

103. The Tribunal finds in all the circumstances that it is just and equitable to disallow recovery of such of the costs incurred by the Respondent as could otherwise be charged through the service charge. The significant breaches by the Respondent and appointment of the manager, whilst the wider outcome is not determinative of a section 20C application, are particularly relevant factors in this instance and the agreement of the Respondent is of note.

Rights of Appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk 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.