FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/00ML/LAM/2020/0017**
Property	**:**	**Lainson House Dyke Road Brighton BN1 3JS**
Applicants	**:**	**(1) Suzanne Eames** **(2) Sylvie Riot and Keith Exall**
Respondent	**:**	**RAQ Estate Management Ltd.**
Representative	**:**	**Dean Wilson Solicitors**
Type of Application	**:**	**Landlord and Tenant Act 1987, Section 24** **Landlord and Tenant Act 1985 Section 20C** **Commonhold and Leasehold Reform Act 2002, Para 5A Schedule 11**
Tribunal Members	**:**	**Judge M Davey** **Mr Nigel Robinson FRICS** **Ms Carolyn Barton MRICS**
Date of Decision with reasons	**:**	**11 November 2021**

DECISIONS

Section 24 Landlord and Tenant Act 1987

The Tribunal has determined that it will not appoint a Manager of the Property and the request for an order is therefore refused.

Section 20C Landlord and Tenant Act 1985 (provisional)

The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985, save to the extent that the Respondent's costs incurred in connection with the proceedings before the Tribunal with regard to the preliminary issue, determined by the Tribunal in its decision of 11 April 2021, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the persons mentioned in paragraph 160 below.

REASONS

The Applications

1. This document contains the reasons for the Tribunal's decision on an application to the Tribunal ("the Application") dated 6 October 2020 (and received on 22 November 2020). The Application, by Ms Suzanne Eames, under section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") is for the appointment by the Tribunal of a Manager of Lainson House, Dyke Road Brighton BN1 3JS ("the Building").

2. Ms Eames' Application was also made on behalf of Mr Keith Exall and Ms Lucy Riot, leaseholders of Flat 1, Lainson House. (References to the Applicant(s) hereafter include Mr Exall and Ms Riot unless otherwise stated). Ms Eames is the leaseholder of Flat 2, Lainson House. The Applicants hold their respective flats in the Building under leases granted for terms of 125 years. It is understood that the long leases of the flats on the Estate are all in substantially the same terms. The Tribunal was provided with a copy of the lease of Flat 1 as being a representative lease ("the Lease").

The Premises

3. Lainson House forms part of a Taylor Wimpey development ("the Estate") completed between 2013 and 2015 on the site of a former children's hospital (the Royal Alexandra) in central Brighton. There are six Blocks

containing a total of 119 flats. They are Cawthorne House (35 flats), Blanche House (23 flats), Thomas House (18 flats), Taaffe House (9 flats), Beves House and Lainson House (20 flats). Beves House contains 14 flats and is owned by Clarion Housing, a registered social housing provider. The five Blocks other than Lainson House are new whilst Lainson House is a Grade II listed converted former hospital building with an extension.

4. The parties to the Lease(s) were the then landlord, Taylor Wimpey UK Limited, the then Management Company, Chamonix Estates Limited ("Chamonix") and the respective leaseholder(s). By a deed of assignment dated 22 February 2018, Chamonix's interest passed to the Respondent, RAQ Estate Management Limited ("RAQ"), which is now the Management Company under the relevant leases. RAQ, a leaseholder owned Management Company, appointed Pepper Fox Limited of Hove as Managing Agents on 1 October 2018. We have not seen the management contract but we are told that the Board of the Respondent is responsible for strategic decisions and Pepper Fox attends to day to day management matters. We are also told that RMB 102 Limited (formerly E&J Ground Rents 9 Limited) is now the freeholder of the Building.

5. The Applicants additionally sought orders, under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 Act ("the 2002 Act"), preventing the Landlord (i.e. RAQ in this case) from recovering the whole or part of the costs of these proceedings by way of a future service charge or administration charge demand.

The Lease

6. Clause 5.1 of the Lease contains a covenant by the Management Company

"in relation to the Buildings and the Common Parts in the terms specified in the Fifth Schedule."

In so far as relevant that Schedule contains the following obligations.

"8. To operate maintain repair and renew (or procure the operation maintenance repair and renewal) the CHP Equipment for the benefit of the owners and occupiers from time to time of the Property and the Estate (including any part or parts thereof)."

"9. To provide Heat to the Property and the rest of the Block together with meter reading, the collection of charges and associated billing as appropriate or necessary."

7. Clause 1.1 of the Lease defines

"Heat" as: "the heat and hot water provided by the Management company using the CHP equipment in accordance with clause 9 of the Fifth schedule"

By the same clause "CHP Equipment is defined as

"The combined heat and power plant and all boiler heat interface units meters pipes watercourses wires cables conduits tanks pumps and any conducting media and all ancillary apparatus plant and equipment necessary for the provision of heat to the block."

8. Paragraph 1(a) of the Third Schedule to the Lease (so far as relevant) includes an obligation by the leaseholder to pay (i) the Maintenance Charge…….. (iii) the Heating Deposit and (iv) the Heating Charge, charged on a monthly/quarterly basis. Paragraph 1(a)(v) provides that "heating usage will be estimated charged on a metered basis measured by the meter readings on the meters that are in place in [the Flat] and all other Flats within the Block."

9. The Maintenance Charge is the proportion applicable to the [Flat] (as specified in Part III of the Sixth Schedule to the Lease) of the sums spent or to be spent by the Management Company on the matters specified in the Fifth Schedule and so far as the same relate the matters specified in Part II of the Sixth Schedule to the Lease.

10. The Heating Charge is defined in Clause 2 as "The element of the Maintenance Charge payable for the provision of heat and hot water to [the Flat]" and the Heating Deposit is defined as "The sum of (£425) or any such other sum determined by the Management Company from time to time acting reasonably and notified to the [leaseholder]."

The preliminary determination

11. The six Blocks are served by a Combined Heat and Power Plant ("CHP"), which supplies hot water and space heating to all flats on the Estate via a Heat Interface Unit ("HIU") located in each flat which measures the fuel consumption of the flat. That measurement is recorded monthly and remotely from each flat's meter by Heatlink Client Services. The Respondent receives monthly gas bills from the energy supplier and then bills each flat quarterly. The CHP is located in the underground car park directly below Cawthorne House.

12. In 2019, for reasons set out in the Tribunal's preliminary determination referred to below, the Respondent, by way of what they described as a trial, partially turned off the CHP heat supply to one of the Blocks (Cawthorne House) for one summer month and in the summer of 2020 turned off the heat supply to all of the Estate for the summer quarter.

13. On 11 April 2021, the Tribunal, having considered the lengthy written submissions from the parties on the preliminary issue of whether the summer shutdown in June 2020 amounted to a breach of covenant by the Respondent, made a paper determination that the Respondent was in breach of an obligation in the Lease relating to the management of the Building by turning off the CHP Equipment (the Communal Heating and Hot Water system) and suspending or terminating the provision of

heating and hot water to the building. The Tribunal also found that the Respondent's action thereby breached the covenant for quiet enjoyment in the Lease.

14. That decision and accompanying reasons is appended to this decision on the substantive Application. It contains details of the background to the Application, a description of the Estate and a detailed examination of the submissions of the parties with regard to that preliminary issue. Those details will therefore not, for the most part, be reproduced in these reasons but where relevant reference is made below to the earlier decision.

The Hearing

15. The hearing of the substantive Application took place by video link on 27 and 28 September 2021. The Applicants and their witnesses were present as were the Respondent's witnesses. Ms Clare Whiteman, of Dean Wilson Solicitors, represented the Respondent. The hearing bundle, which ran to 664 pages, contains statements of case and responses by the Applicants and Respondent along with accompanying documentation including witness statements. Both sides' witnesses were duly examined and cross-examined by the respective parties to the Application or their representatives.

The Law (See also the Annex to these reasons)

16. Landlord and Tenant Act 1987: Section 24 provides as follows:

> 24 (2) The appropriate tribunal may only make an order under this section in the following circumstances, namely—
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> (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
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> (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.

The Applicants' Case

17. In their extensive statement of case the Applicants rely on a number of matters as ground(s) for the appointment of a manager under section 24 of the 1987 Act. They can be summarised as follows.

The breaches of obligation found by the Tribunal to have been incurred by the Respondent.

18. The Applicants rely on the Tribunal's preliminary determination of a breach of obligation by the Respondent as a ground under section 24(2)(a) of the 1987 Act.

Failure to consult

19. The Applicants refer to Paragraph 9.9 of the RICS Service Charge Residential Management Code (3rd Edition) (RICS Code), which provides that:

> "You should aim to achieve good and effective communication with clients, leaseholders, residents, occupiers and any RTAs. In addition to any statutory consultation requirements you should consult with leaseholders on management matters that are likely to have a significant effect on the level, quality or cost of services provided.
>
> When managing on behalf of RMCs or, in particular, RTM companies, you should distinguish between seeking the views of shareholders/guarantors, clients ('landlords') and consulting with leaseholders. You will frequently need to do both"

20. The Applicants argue that the Respondent failed to consult with leaseholders before mandating the shutdown of the CHP system and say that the Respondent has not, to date, held any RAQ wide residents meetings for leaseholders. The Applicants argue that this satisfies the ground for appointment of a manager in section 24(2)(ac) of the 1987 Act. They say that residents' meetings present the opportunity for an open forum where management and leaseholders can engage in dialogue and informed decisions can be made. The Applicants say that leaseholders have many concerns over the management of the Estate but open dialogue is absent. They submit that there is a continued lack of consultation to do with any aspect of the management of the Estate. The Applicants reiterate that, despite the fact that objections from leaseholders of flats in Lainson

House alone outnumbered the small number of Directors that mandated the CHP shutdown, the Respondent proceeded with the shutdown regardless of those objections. The Applicants say that lack of consultation and dialogue is something that is of huge concern to leaseholders and assert that the Respondent pays no regard to the opinions of the leaseholders.

Failure to consider objections

21. The Applicants refer to (a) a formal objection by the first Applicant of 26 May 2020 to the proposed summer 2020 shutdown (b) objection to the proposed shutdown by residents of Lainson House (c) the opinion of the freeholder, of 13 May 2020, which was sent to Pepper Fox, stating that the proposed shutdown was not authorised by the Lease (d) legal opinion to the same effect obtained by three flat owners at Lainson House (e) objections to the proposed shutdown from residents of Beves House. The Applicants allege that the Respondent acted unlawfully in failing to have proper regard to these objections.

22. Paul and Catherine Edwards, leaseholders of Flat 12 Lainson House, gave evidence that on 7 March 2020 Mr Michael Turner-Samuels had emailed to the effect that since a majority of residents at Lainson House were opposed to the proposed shutdown, that Building would be excluded from the proposal. Kate and David Law, leaseholders of Flats 9, 10 and 11 Lainson House, gave evidence that the leaseholders of 17 of the 20 flats in Lainson House had opposed the proposed heating shutdown.

Conflict of interest

23. The Applicants argue that there was a breach of duty by the Directors of the Respondent, viz: to avoid conflicts of interest, under Section 175 of the Companies Act 2006, by having failed to separate their responsibilities as company directors with their private status as leaseholders within the RAQ development.

Unprofessional behaviour

24. The Applicants cite the following instances of what they allege to be unprofessional behaviour by the Respondent.

(1) The Respondent's description of the shutdown as "a trial."

25. The Applicants say that this is misleading because "by definition, a trial is a scientific study, a test of the performance, qualities, or suitability of something. A trial invites participation and is prepared under a strict set of parameters enabling data to be captured, compared and measured and producing results based on factual evidence. The Respondent supplied no such criteria, parameters, data, evidence-based results".

(2) Post-Tribunal decision assertions.

26. The Applicants say that even after the Tribunal decision of 11 April 2021

confirming the breach of covenant, the Respondent continues to disseminate misleading information to the Leaseholders claiming inefficiencies of the CHP system, cost savings and wastage. The Applicants say that the Respondent has failed to acknowledge the actual data presented by the Applicants that they claim clearly discredit its theories.

27. Furthermore, the Applicants allege that when in a document supplied on 28 May 2021 the Respondent reported: "(f) further summer central hot water shutdowns will not be possible for legal reasons, despite any financial, comfort and environmental benefits" it failed to acknowledge that the legal reasons were the Tribunal's determination that there had been a breach of covenant by the Respondent. The Applicants consider this to be a misrepresentation of facts and that not declaring the legal reasons to be a breach of covenant is sufficient circumstance to make it just and convenient to appoint a manager.

(3) Failure to bill leaseholders for the Heating Charge for the summer quarter of June-July-August 2020.

28. The Applicants refer to the Third Schedule of the Lease, paragraph 1(a)(iv), which contains an obligation on the Tenant "To pay the Heating Charge to the Management Company such charge to be assessed in accordance with clause (v) hereof and charge on a [monthly/quarterly] basis".

(4) Intention to impose annual shutdowns.

29. The Applicants state that the Respondent evinced, in advance of the trial shutdown, an intention to impose annual summer shutdowns despite its assertions to the contrary.

(5) Threats

30. The Applicants allege that the Respondent threatened to impose the costs of any proceedings, with regard to the shutdown, on leaseholders through the service charge.

(6) Mediation

31. The Applicants say that the Respondent failed to offer any mediation mechanism to the residents to help resolve disputed matters.

Further breaches of obligation.

32. The Applicants allege that there have been further breaches of relevant obligations by the Respondent as follows.

(1) Heating deposits

33. The Applicants allege that there was a failure by the Respondent to secure or replace the Heating Deposits (to be held on trust) on the takeover of the

Management Company from the previous Management Company (Chamonix) on 22 February 2018. The Applicants argue that the Respondent had failed to account for around £43,000 of Heating Deposit monies (paid by leaseholders), which the Lease obliges the Respondent to keep in a designated deposit account and reimburse to owners when they sell, less any outstanding heating charges.

(2) Cawthorne House shutdown, 2019.

34. The Applicants state that the shutting down of the Heating System to Cawthorne House in August 2019 was without the consent of the leaseholders of flats in that building.

(3) The Heating Charge

35. The Applicants say that there was a failure by the Respondent to adhere to the Lease in applying the Heating Charge.

Paragraph 9 of the Fifth Schedule to the Lease 9 obliges the Respondent

"To provide Heat to the Property and the rest of the Block together with meter reading, the collection of charges and associated billing as appropriate or necessary." The Applicants argue that this does not authorize the use of Heatlink for the *collection* of charges, which is therefore an unnecessary cost.

(4) Beves House

36. The Applicants argue that the Respondent disregarded the residents of Beves House who were affected by the shutdown and also refer to what they describe as a lack of clarity from the Respondent as to the relationship between RAQ and Clarion (the social housing head leaseholder of Beves House).

Breach of Lease – Quiet Enjoyment.

37. The Applicants assert that

"the moral implications of this breach of [the covenant for] quiet enjoyment and the emotional impact of the Respondent's actions cannot be underestimated, as the witness statements, email exchanges and testimonials highlight."

The Applicants consider this breach to be significant enough to warrant the appointment of a manager on just and convenient grounds.

Other grounds

Service charge costs

38. The Applicants submit that the shutdown of heating to Cawthorne House in 2019 incurred extra charges in that heating engineers (from Norton

Heating Company) attended to switch the heating supply off and then back on and the costs of the same were recharged to all residents. The Applicants further state that "of significance, the Respondent rolls the cost of the standing charge into the unit heat charge, thus adding cost to all leaseholders in the RAQ development." Other alleged costs incurred by leaseholders related to the fitting of immersion heater timers in flats and excess electricity charges incurred by reason of using immersion heaters during the shutdown.

39. The Applicants allege that the Respondent is overcharging for the supply of heat. They argue that the basis on which the Respondent charges the cost of heat is fundamentally flawed and that the methodology proposed by the Applicants gives a more accurate reflection of the true cost. They also argue that the Respondent failed to negotiate a more competitive raw gas rate for 2020.

40. The Applicants also consider it is just and convenient to appoint a manager because they allege that the Respondent showed negligence in terminating the gas contract with e.on in 2019 and replacing it with a contract with Scottish Hydro at a higher charge rate thereby increasing the charges paid by leaseholders together with a penalty charge imposed by e.on for early determination of the former contract.

Dismissal of Director

41. The Applicants state that on 2 December 2019 leaseholders of Lainson House learned that the Respondent had dismissed one of their resident directors, Mr Daniel Clark, citing a vote of no confidence from the Board. They say that this was extremely disturbing because Mr Clark is in fact a chartered surveyor and member of RICS well versed in property matters. The Applicants say that Mr Clark was alarmed at the proposed CHP shutdown on legal, cost and moral grounds and critical of the Board's conduct. They suggest that this is why he was removed from the Board on undisclosed grounds. The Applicants believe that this conduct was unreasonable behaviour by the Respondent making it a just and convenient ground for appointing a manager. Mr Clark gave evidence to the effect that he felt the Board had engineered his resignation because he was opposed to the heating shutdown, which he had been advised was unlawful.

42. The Applicants state that, as from 30 September 2018, the Respondent replaced Chamonix Estates with Pepper Fox as managing agents without consulting Leaseholders. The Applicants state that the Respondent entered into an open ended contract with Pepper Fox which the Applicants believe constitutes a Qualifying Long Term Agreement and as such required consultation (under section 20 of the Commonhold and Leasehold Reform Act 2002).They say that the choice of agent, the comparison criteria between the incumbent and proposed agent(s) and the timing and duration of such potential engagement were never discussed with leaseholders. They assert that the decision to sever the incumbent's contract mid-year had serious repercussions on costs for

leaseholders.

Validity of Deed of Assignment

43. The Applicants raise a number of issues with regard to the deed of assignment between Chamonix Estates Limited and RAQ Estate Management Limited of 22nd February 2018, thereby questioning the validity of that deed.

44. The Applicants state that as a result of the management transfer from Chamonix to Pepper Fox double charging had occurred and more specifically increased service charge costs associated with the caretaker had been incurred.

45. The Applicants argue that a number of queries had been raised with the Respondent with regard to the 2019 and 2020 service charge accounts, which had not been satisfactorily answered by the Respondent. The Applicants submit that, the Respondent having failed to provide accurate and specific information on costs cross-charged to leaseholders, it is just and convenient to appoint a manager to resolve the outstanding issues.

46. The Applicants also referred to what they consider to be unreasonable annual rises in service charges since RAQ took over.

47. The Applicants further allege that reserve funds had been misallocated by the Respondent at the time of the handover from Chamonix, which led to a demand for increased service charge reserve payments as a result of spurious adjustments to those reserves by the Respondent.

48. The Applicants had raised with the Respondent a number of detailed accounting issues insofar as they affected Lainson House and submitted that they believed unreasonable service charges were imposed while the Respondent failed to raise and settle the issues with the developer. The issues concerned (a) the matter of a tile guard on the roof of Lainson House (b) errors in electricity bills, (c) a drainage issue from 2017 and (d) a lightning protection charge.

49. Finally, the Applicants state that, in addition to the Lainson House specific drainage issues, there have been problems on the Estate relating to drainage. They say that in February 2019 a leak into the underground car park emanating from around a drainpipe located in the box section of Cawthorne House was reported. They assert that despite several visits by drainage companies and a surveyor, nothing has been done to rectify the situation and that enquiries in this regard are simply not responded to. However, they say that ad-hoc bills for drainage investigations and surveyors have been applied to service charges.

Engagement with Directors

50. The Applicants state that it is difficult to engage with Directors other than via Pepper Fox or the Chairman of the Board and referred to unacceptable conduct by Board Directors.

The Applicants state that the external appearance of the Estate including its grounds has badly deteriorated with poorly maintained gardens.

The proposed manager

51. The Applicants proposed the appointment of Mr Geoff Hollywood BSc (Hons), MIRPM of Pembroke Property Management Limited as Manager of the Building. At the hearing the Tribunal questioned Mr Hollywood as to his qualifications and experience, his willingness to act and the terms on which he would manage the Building were he to be appointed. The Respondent's representatives also questioned Mr Hollywood on these matters.

The Respondent's case

Jurisdiction

52. The Respondent states that the Application was based on a notice served on the Respondent by the Applicants under section 22 of the 1987 Act and dated 9 July 2020. The Respondent says that the particulars relied on in that notice relate to the operation of the heat and hot water system and the suspension of the same during the summer months of 2020. They state that "The grounds also include an alleged failure to consult regarding the switching off of the heating and the hot water supply and the other circumstances alleged in which it is just and convenient for the Order to be made relates to the alleged controlling of the Management Company by Mr Turner-Samuels."

53. The Respondent says it is noted that the Application to the Tribunal repeats these grounds but also seeks to expand the allegations to allege circumstances on a much wider basis. It says these allegations were not included in the section 22 notice and the Applicants have produced a substantial number of documents relating to those allegations

The preliminary determination

54. The Respondent says it accepts the determination of the Tribunal that the shutdown of the heating system in the summer months of 2020 was a breach of covenant but draws attention to the Tribunal's observation in its reasons for decision that the Respondent's decision was made in good faith. The Respondent submits that should be the end of the matter but nevertheless will address the issues raised by the Applicants. The Respondent says it does not propose to respond to the issues alleging the breach itself as these have been rehearsed in the preliminary issue and the Tribunal's determination on that has been given and accepted by the parties.

Failure to consult

55. With regard to the allegation that the Respondent failed to consult in the period leading up to the decision to trial a shutdown of the heating system the Respondent says that whilst there is no statutory obligation on the company to consult regarding day-to-day management of the Building it was aware that the issue raised by the Applicants was contentious. It therefore sought both expert advice and professional (legal) advice having received numerous complaints about the heating as evidenced by the Respondent's witness statements in the preliminary issue determination. The Respondent says that in addition it referenced the problem and the possibility, then probability, of the summer heating shutdown in several newsletters to leaseholders.

56. The Respondent also states that in November 2019 a meeting between the Respondent, Pepper Fox and Lainson House leaseholders was proposed by the Respondent to the Applicants to discuss any issues Lainson House leaseholders had. This offer of a meeting was eventually taken up and the meeting held in February 2020. The Respondent says that although that meeting ran out of time, a follow-up meeting was offered but not taken up by the Applicants or other Lainson House leaseholders.

57. The Respondent says that on the more general allegation of failure to consult, the Respondent has held several AGMs and leaseholder meetings on the following dates, all of them with appropriate notice given in advance; 28 March 2019, 24 February 2020 and 21 June 2021. The Respondent said it has also issued newsletters on the following dates; 26 February 2018, 6 July 2018, 22 August 2018, 13 February 2019, March 2019 (x 2), July 2019, November 2019, December 2019, January 2020, March 2020, May 2020, August 2020, November 2020, December 2020, January 2021 and March 2021.

Failure to consider objections

58. With regard to the allegation that the Respondent failed to consider objections to the proposed heating shutdown, the Respondent says that the Board did not fail to consider the objections but came to the conclusion that the issue was so overwhelmingly important that they should nevertheless trial the shutdown in the hope that it would demonstrate both cost savings and an improvement to the living conditions of residents such that the Applicants would be convinced of its merits. It says that it was made clear that after the trial all leaseholders would be offered the opportunity to comment afterwards before a decision was made on future summer shutdowns.

59. The Respondent denies that it is difficult for the Applicants to communicate with the Respondent and says that the Respondent has a perfectly good and reliable communication email address for the Board as a whole, which ensures that if any board member is absent others can pick up issues of concern in their absence. It says that in fact the direct method of communication at that time was to the chairman of the Board or Pepper Fox and the relevant email addresses were frequently

advertised in the newsletter. The Respondent considers that neither route is inadequate.

60. The Respondent denies that it was acting on a whim when implementing the heating shutdown and says that it was acting in good faith, as the Tribunal had recognised, whilst the Respondent acknowledged that objections came almost entirely from residents of Lainson House.

61. The Respondent says it should be noted that the legal opinion referred to by the Applicants is not understood to have been made available to the Respondent and is not exhibited to the Applicant's case. The Respondent is unable to confirm they have had sight of it and don't recall having received a contrary legal opinion at that time despite the claims that one existed. It says that the only documentation received was the preliminary notice and a covering letter from ODT solicitors.

Conflict of interest

62. The Respondent strongly denies that there is any conflict of interest on the part of the Company and all of its participating directors. The Respondent says furthermore that the perception of a conflict by the Applicants does not appear to be shared by the vast majority of shareholders.

Unprofessional behaviour

63. The Respondent denies that it has behaved in an unprofessional manner. It states that the shutdown was never presented as anything other than a trial in order to determine whether or not there were sufficient benefits to suggest that consideration should be given to future shutdowns in the light of the findings. It says that the Board did not have a fixed strategy of imposing future shutdowns and had not taken any decision to that effect when conducting the trial.

64. The Respondent also disputes the suggestion that it has misrepresented the benefits to be gained from the shutdown or has failed to acknowledge the Tribunal determination. It says that the Tribunal case was notified to leaseholders in newsletters of August 2020, November 2020, March 2021 and a Zoom meeting of 21 June 2021.(The matter of the alleged savings to be gained from a heating shutdown is dealt with below).

Mediation

65. The Respondent denies that it has failed to engage in mediation with the Applicants. The Respondent says it remains committed to offering to mediate and has made a number of suggestions that such communication channels be opened which so far have been rejected by the Applicants.

Additional breaches

66. The Respondent disputes that the Tribunal has jurisdiction at the final hearing to make further determinations of breach of obligation in relation to matters, which were not specified in a preliminary section 22 notice, and says that if the Tribunal considers that it does have such jurisdiction the Respondent may wish to file more detailed evidence.

67. With regard to the Heating Deposits, the Respondent says that following the transfer from Chamonix, it emerged that Chamonix had used the deposits in breach of trust to meet shortfalls in cash flow with regard to heating costs. Indeed, the heating account was overdrawn to such an extent, even after the entire amounts of the heating deposits had been used to reduce the shortfall, that there remained an excess of £24,194 at the time of handover. Eventually, following court proceedings instituted by the Respondent, Chamonix was ordered to pay the sum of £26,131.18. The Respondent said that there are administrative costs involved in taking Heating Deposits through deeds on each sale and that the deposits were there only to be used when a leaseholder refused to pay a valid demand for heating charges. The Board had therefore exercised its discretion not to require such deposits in the future.

68. With regard to the CHP shutdown at Cawthorne House in 2019, the Respondent says it is not aware of any complaints before during or after that shutdown and indeed questionnaire responses from Cawthorne House residents following the 2020 summer shutdown showed that all respondents were in favour of further shutdowns.

69. With regard to Beves House, the Respondent says that it does not disregard any impact on Beves House. The Respondent says it has no contractual relationship with Beves flat leaseholders or with the housing association head lessor and freeholder for Beves House whatsoever. The Respondent believes that the lessor of Beves House engages Pepper Fox directly to undertake specific tasks on an ad hoc basis.

70. The Respondent says that Beves House shares some of the services operated for the benefit of the estate as a whole and contributes to the cost of the same. This includes the central heating system and external parts of the Estate and therefore the only overlap between the parties relates to these areas and the accounts are prepared on that basis. However, the Respondent says it is aware that there is a legal issue for the Tribunal as to whether any order made may relate just to Lainson House or to the wider estate excluding Beves House.

71. The Respondent says that Pepper Fox communicated with the owner of Beves House with regard to the 2020 shutdown trial although it understands that that communication was not subsequently passed on by the owner to the leaseholders of the flats which may be the reason for some or all of their expressed discontent.

72. With regard to the Norton Heating Company there is a single charge of £264 incurred under the standing charges acknowledged and referred to in the Respondent's calculations. With regard to immersion heater timers, the Respondent says that this was a matter for individual leaseholders and the immersion heater can be switched on and off using the existing wall switch instead. With regard to the electricity cost, the Respondent says that the kilowatt hour charge of electricity was cheaper than the Heat Link kilowatt-hour charge would have been at that time.

Additional grounds

73. The Respondent explained that per kwh charges for heat are set in advance based on estimated usage totals and system efficiency rates. Actual accounts for the year are then independently prepared in arrears with any overcharge or undercharge duly noted and a deficit charge or credit applied as decided by the Board bearing in mind the level of the heat service reserve. For example, in 2020 a credit of £5,000 was applied to the flats' heating bills relating to a surplus arising in 2019 as noted on the 2020 annual service charge accounts.

74. The Respondent says a certain level of heat service reserve is required because there is a cash flow issue due to gas bills being issued and paid monthly in arrears, but income from leaseholders being billed and received only quarterly in arrears. A certain level of float (the heat service reserve) must therefore be built up and maintained to ensure that gas bills can always be paid on a timely basis. The Respondent says it is important to keep the heat service monies including reserve monies separate from any other accounts because (a) they include contributions from Beves House flats and (b) contributions by each flat are not equal or fixed amounts but relate to each flat's heat usage.

75. In terms of the allocation of the cost of gas, the Respondent says it has continued the system used by Chamonix, which is to build the supplier's standing charge and kilowatt-hour cost into the kilowatt hour rate billed to leaseholders. Within the rate there is included the cost of the lost (wasted) heat as well as the cost of the metered heat taken by the flat. Because the system efficiency changes markedly depending on the season the kilowatt hour rate also changes seasonally. The Respondent says all this ensures that those who use the central system of heating pay for the cost of running the system in proportion to their usage.The Respondent says that even if charging could be done in a different way the total amount required to be received from leaseholders by the Respondent would be the same.

76. The Respondent says that when RAQ became the Management Company Pepper Fox liaised with the gas suppliers to change the gas contract into the Respondent's name and used an energy broker to facilitate the changeover and rates. They were advised that the supply contract was not assignable, and it was therefore terminated by e.on. This was

challenged but Pepper Fox was given no say in the matter. The brokers verified that e.on was not obliged to hold the rates under the previous contract and a new contract with SSE was therefore arranged.

77. The Respondent says that there had in fact been difficulties in billing caused by both suppliers. It says that following negotiations by Pepper Fox and its brokers with the suppliers, reasonable solutions were eventually found and acceptable credits received from both suppliers. The Respondent says that higher gas prices in 2019 would always have been payable due to the general increasing gas market prices for annual contracts at that time. The Respondent says that furthermore, through close cooperation with Pepper Fox and their energy broker, the Respondent has captured material benefits for leaseholders from the volatile natural gas market conditions by locking in significantly, and increasingly lower, annual gas price contracts for 2020, 2021 and 2022.

78. With regard to Mr Daniel Clark's service as a director with the Respondent Company, the Respondent says that because a number of directors had grave concerns regarding Mr Clark's conduct and were unable to work directly with him the Board considered it best to do without his involvement until a general meeting could be held to decide on the matter. At the next AGM held on 28 October 2020 the shareholders voted overwhelmingly in favour of Mr Clark's removal. The Respondent says there is no evidence of any campaign to oust him and an allegation to that effect by the Applicants is unsubstantiated and denied.

79. With regard to consultation on the dismissal of Chamonix and the appointment of a new managing agent the Respondent says it is denied that the appointment of Pepper Fox is a qualifying long-term agreement and says there is no evidence before the Tribunal to that effect. The Respondent says that Chamonix was retained for a short period before the RAQ directors decided on the alternative appointment. The allegation of serious repercussions on costs is unsubstantiated and the Respondent denies that it acted in disregard of the leaseholders or in a cavalier way. The Respondent says that the annual service charge account shows a steady rise in overall leaseholder costs starting from the Estate completion through Chamonix's time as manager and into the present management structure with the current year showing a levelling off.

80. With regard to the validity of the deed of assignment to RAQ the Respondent says that RAQ is the party to these proceedings, does manage the Estate and the deed, which is registered at the Land Registry, was expressly agreed and signed between Chamonix Estates Limited and RAQ Estate Management Limited. The Respondent says that the allegation as to invalidity of the deed should be treated with considerable circumspect.

81. The Respondent says that the contract with Pepper Fox is terminable on one months' notice. It says there was considerable dissatisfaction with

Chamonix who was only interested in looking after the developer's interests while going through the flat sales process and during the subsequent warranty period. When it came to appoint a new agent 18 firms were contacted by questionnaire, of which eight responded, from which a shortlist of three were interviewed in person, from whom Pepper Fox was appointed. The Respondent says that this is ultimately a decision of the Board whose members are appointed for the very purpose of undertaking such tasks.

82. With regard to the concierge/caretaker the Respondent says that it is its function to make decisions in relation to day-to-day running of the Company. It says that given the size of the Estate it would be impossible to consult leaseholders on all matters and the Applicants ignore the fact that the Respondent is tasked with this decision-making power. It says that of its very nature RAQ makes those decisions unilaterally but subject to statutory and contractual obligations and its obligations under its Articles of Association. The Respondent says that it took legal and specialist human resources advice on the implications of the long-term sickness of the caretaker, Mr Baker, and has dealt with his employment accordingly. It says that there is no requirement to consult with leaseholders on the appointment of the managing agent.

83. With regard to accounting issues, the Respondent says that it and its accountants have provided the Applicant with a wealth of accounting information. It says that the only issues the Respondent was aware of concerning the accounts were legacy issues inherited from Chamonix's poor accounting information and practices. It says that information has been provided in a transparent way and difficulties with Chamonix identified in the annual service charge accounts.

84. With regard to 2019 issues the Respondent says that it was not unreasonable for there to be a delay of six weeks in providing the Applicant with detailed information given the number of detailed questions involved. Second the Applicants complained that they were then provided with an attachment, which itemised every single head of expenditure for the entire Estate. The accountants did not agree that the information requested was a simple task and said it would charge to provide more detail which the Respondent decided would be unreasonable expenditure in the light of the information already given.

85. The Respondent considers that the year on year increases in service charge are to be expected because as the Estate ages more maintenance is required, whilst insurance which remains the responsibility of the freeholder, has regrettably increased. Nevertheless, it says that there have been savings on the management fees.

86. The Respondent says that no reliance can be placed upon the reserves figures supplied by Chamonix, which show no relation to the total reserves at the end of 2017 or upon handover to Pepper Fox at 30 September 2018 and there is an absence of explanation from Chamonix as to how the figures were arrived at.

87. The Respondent says Chamonix failed to report annually or at all the reserve held by each Estate area, i.e. each house, estate, parking and central heating. The total reserves at the end of 2017 (Chamonix) were £55,016 and at the end of 2018 (Pepper Fox) £55,548. The information provided by Chamonix did not enable the reserve sum to be broken down between the different charge areas. RAQ therefore deducted from the 2018 year end reserve total the amounts known to have been billed for each reserve charge area for 2018 and then allocated the balance between the houses on the ratio of their flats then added back the amounts paid in 2018 thereby creating the reserve allocation shown in the 2018 service charge accounts. The Respondent says it considered that it had no better way of allocating the available reserve funds following handover.

88. With regard to the Lainson House specific accounting issues the Respondent says the tile guard issue arose prior to RAQ involvement but nevertheless it was resolved by RAQ who consider that no further work was required at this time. The Respondent says that the identified electricity charges are currently being resisted and reclassification as residential usage has been sought but until the supplier accepts this, these invoices will include these charges. The Respondent understands that some companies will not reclassify common way supplies as residential. The Respondent says that the drainage charge in 2017 predates the Respondent's involvement and it understands that Taylor Wimpey refused any responsibility. The Respondent submits that the wider drainage repair works are a service charge cost. The Respondent says that the credit note in respect of lightning protection appears in the 2019 accounts, which show a credit to Lainson House in 2019.

89. The Respondent says there have been water leaks into the underground car park and some are continuing but there have also been effective repairs carried out to date. They say that they have been in touch with NHBC regarding the remaining leaks, but it has refused responsibility given the excess limit and also due to the area being a car park and not capable of residential occupation. The Respondent says that the actual source of any minor leaks is the subject of continual monitoring.

90. The Respondent says with regard to alleged unacceptable conduct by Board directors, certain emails have been provided and equally the directors consider that they have been subjected to similarly unhelpful and abusive comments from time to time. The Respondent says comments attributed to Andrew Metcalfe are completely incorrect and denied.

91. In conclusion it is the Respondent's case that the Applicants are in a minority both in respect of the Estate and in relation to this Application which, it says, is not on the whole supported by other residents from the Estate. The Respondent says that the Applicant's case

makes it clear that this is an issue concerning the central heat system shutdown in respect of which the Respondent acknowledges the breach. In respect of the alleged control of the board by Mr Turner-Samuels the Respondent says that it invites active participation from shareholders and insists that the Board is run democratically in accordance with the company's articles. It says that furthermore RAQ has introduced a policy for the governance of the Board.

92. The Respondent contends that far from being no longer a pleasant place to live, the vast majority of residents and leaseholders find the Estate a very pleasant place to live

93. On the question of the gardens and the lack of gardening expertise, this is refuted by the Respondent which says it uses a specialist company, The Landscape Garden Company and Pepper Fox advises that it has good feedback about them generally.

94. The Respondent submits that these issues are neither extraordinary nor do they warrant a Tribunal appointed manager to deal with an estate that is run professionally, albeit not to the satisfaction of the Applicants. The Respondent says that the issues raised by the Applicants are numerous and they continue to campaign against the Respondent. The Respondent says that in spite of that it is tackling management issues appropriately and continues to act democratically and in reliance on professional support and encouraging active participation of leaseholders in the Company as board members. The Respondents says it has introduced appropriate policies in response to observations from shareholders and continues to be responsive and to undertake its obligations with the appropriate degree of engagement. The Respondent says the Board members are flat owners themselves and have a very clear interest in upholding standards on the Estate.

Discussion and determination

95. The Tribunal would not go so far as to state that the appointment of a manager by the Tribunal under the 1987 Act is a remedy of last resort. However, it is clearly a serious step which requires that an Applicant needs to establish not only one of the "gateway" grounds set out in the 1987 Act, but also that it is just and convenient for an order to be made. (Indeed this extra requirement is also ground in itself). This requires the Tribunal to examine and consider all relevant circumstances. It does so by looking to the future whilst of necessity having regard to what has happened in the past in so far as that can offer a guide to what might be anticipated were an order to be granted or refused.

96. The development to which this Application relates is relatively short lived but already has a turbulent management history. When the flats were constructed between 2013 and 2015 and sold on long leases by the landlord, Taylor Wimpey, the initial Management Company was Chamonix Estates, which was also a party to the Lease. Dissatisfaction amongst a number of leaseholders with Chamonix's performance led to

the early formation of an action group of leaseholders which initiated a sustained campaign to bring about a transfer of the Management Company from Chamonix to a residents' management company. (Mr Michael Turner-Samuels and Dr Stephanie Cooper set out this stage in their witness statements).

97. That change eventually took place when, by a deed of transfer, dated 22 February 2018, Chamonix assigned its interest in the leases to the newly formed RAQ Estate Management Limited in which all leaseholders were invited to become shareholders. Chamonix remained in place as the managing agent of the new company until the Respondent terminated Chamonix's contract from 30 September 2018 and Pepper Fox Limited was appointed by the Respondent as managing agent thereafter.

98. Since then, a number of leaseholders have become dissatisfied with the new management structure and sadly the dispute escalated to the point where on 9 July 2020 the First Applicant served a notice on the Respondent under section 22 of the Landlord and Tenant Act 1987. This was followed by the present Application to the Tribunal (received on 22 November 2020) for the appointment of a named manager under section 24 of the 1987 Act. The Application for the appointment was triggered by the Respondent's decision to shut down the heating system to the Blocks for the summer quarter of 2020. Having, obtained a determination that a shutdown was not permitted by the terms of the Lease the Applicants continued with the Application for the appointment of a manager and sought to widen the grounds relied on in their original notice of intent.

99. The building to which the Application relates is Lainson House. However, it would be impractical, because of the way in which the service charge structure works, if a manager were to be appointed only in respect of Lainson House should the Tribunal be willing to make a management order. Any Tribunal appointment would therefore need to relate to all five blocks managed by RAQ. Indeed, section 24(3) of the 1987 Act provides that "The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made."

100. The Respondent has raised the matter of the scope of the section 22 notice, which specified that an order would be sought by the Applicant on a number of grounds. The first was a breach of the obligation to provide heat and hot water. The second was a failure to consult residents, in accordance with the RICS Management Code, in relation to the shutdown of the heating system in the summer of 2020. The third ground was based on an allegation that the RAQ was the alter ego of its chairman Mr Michael Turner-Samuels, who is alleged to have had de facto control of the Block alone through his instructions to the managing agents which the Applicants consider to be undemocratic.

101. The Respondent says that the Applicants' case as presented to the Tribunal goes beyond the grounds specified in the section 22 notice and

as such should not be entertained beyond the confines of that notice. Nonetheless, should the Tribunal not agree, the Respondent has dealt with these further grounds relied on by the Applicants. Section 24(7) of the 1987 Act permits the Tribunal to make an order notwithstanding an Applicant's failure to comply with the requirements of section 22(2). However, it is the Tribunal's view that any grounds not specified in the section 22 notice should be related in some way to the grounds specified in the notice if they are to be permitted to form the basis on which an order is made.

102. The present Application is focused, but by no means exclusively, on the decision of the Respondent to shut down the CHP system in the summer quarter of 2020. The Tribunal has already determined in its decision of 11 April 2021 that this action amounted to a breach of two covenants in the Lease. It follows that the Applicant has made out a ground under section 24(2)(a). However, that would only lead to an order if the Tribunal were to consider it to be just and convenient to appoint a manager. The breaches are of course now historic, and the Tribunal considers that looking to the future it is not possible to argue, in the absence of any aggravating factors, that it would be just and convenient to make a management order on the basis of these breaches alone.

103. The Applicants argue that there are indeed such aggravating factors present with regard to the shutdown. They say that the Respondent was determined to go ahead with the heating shutdown come what may and irrespective of the views or objections of affected leaseholders.

104. In its decision of 11 April 2020, the Tribunal accepted that there was clearly a problem of excessive summer heat in the buildings on the Estate with the probable exception of Lainson House. Paragraph 64 of that decision states

"The Applicants claim that the evidence of the witnesses for the Respondent is anecdotal, partial and not based on any scientific study. The Tribunal does not find these claims to be established. It is tolerably clear to the Tribunal that there is a problem with overheating in the common areas and flats, particularly at the upper levels of most if not all of the Blocks and that the lower levels of Lainson House are much less likely to be affected. The nature of the piping network is almost certainly the source of the problem. The November 2015 report of Osborn Associates, which found this to be the case, related only to Cawthorne House but it seems reasonable to infer that the same problem was likely to be the case in the other Blocks and the witness statements of the Respondent's witnesses support this."

105. The question therefore is whether the Respondent can be said to have acted unreasonably or in bad faith when failing to be persuaded by the wishes of the residents of Lainson House. The Applicants suggest that the Respondent was determined to go ahead with the shutdown come what may irrespective of the Applicants' argument that the shutdown was not

permitted by the Lease, or that the solution and alleged benefits had not been demonstrably established to be reasonable even if the Lease had permitted a shutdown. However, the Tribunal considers that it is not established that the Respondent failed to consider objections as opposed to considering but rejecting them.

106. There was clearly a choice as to how to deal with the problem and the Respondent chose the solution that it considered to be the most reasonable, and in the interest of the Estate as a whole, albeit this meant that the contrary views of residents of Lainson House were not accepted. We know that the solution chosen was a breach of covenant, but was the breach so egregious as to make it just and convenient to appoint a manager? The Respondent believed, on advice, that its chosen solution was not only lawful but that it would prove cost effective for leaseholders and produce a more comfortable living environment for residents. (Ms Mahiri Miller, 2 Cawthorne House) has testified as to what she believes to be the adverse effects of overheating on her health in the summer of 2021). The Respondent now accepts that its actions were contrary to its obligation in the Lease to provide heat and has given an undertaking that the shutdown will not be repeated. The Tribunal accepts the Respondent's description of the shutdown as a trial, although its case was not helped by an email of 20 July 2020 to a resident in Beves House, from Phoebe Heath of Pepper Fox, stating that the summer shutdowns would continue in future years. This undoubtedly created an ambiguity in the Respondent's message.

107. However, in all the circumstances, the Tribunal does not consider that, despite the breaches of covenant found to have occurred, it is just and convenient to appoint a manager on the ground in section 24(2)(a) of the 1987 Act in relation to those breaches.

108. The section 22 notice also specified the ground set out in section 24(2)(ac) of the 1987 Act, that is to say where the Tribunal is satisfied 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 that it is just and convenient to make the order in all the circumstances of the case.

109. The Applicants refer to Paragraph 9.9 of the RICS Service Charge Residential Management Code (3rd Edition) (RICS Code), which provides that:

> "You should aim to achieve good and effective communication with clients, leaseholders, residents, occupiers and any RTAs. In addition to any statutory consultation requirements, you should consult with leaseholders on management matters that are likely to have a significant effect on the level, quality or cost of services provided.
>
> When managing on behalf of RMCs or, in particular, RTM companies, you should distinguish between seeking the views of shareholders/guarantors, clients ('landlords') and consulting with leaseholders. You will frequently need

to do both"

110. The Applicants argue that the Respondent specifically failed to consult with leaseholders before mandating the shutdown of the CHP system. This is not denied by the Respondent, who says that it consulted leaseholders after the event to determine whether they were for, neutral or against the shutdown, with a view to deciding whether there should be further summer shutdowns. However, although we know that the shutdown was not permitted by the terms of the Lease, and therefore it follows that no consultation was required by the RICS Code, it is surprising that the Respondent did not first consult leaseholders in any event, given its belief that the action was lawful. Nevertheless, it was aware of the objections of leaseholders in Lainson House by the time it made its decision.

111. The third ground referred to in the section 22 notice is that covered by section 24(2)(b) of the 1987 Act. The Applicants allege that the Respondent is effectively the alter ego of Mr Michael Turner-Samuels, the person who was until recently the Chairman of the Board of Directors. Furthermore, they allege that Mr Turner-Samuels and a small group of other Directors have managed the Company in an opaque autocratic way so as to alienate many leaseholders and to create a lack of confidence in the Board.

112. In the presentation of their case the Applicants amplified this ground to cover related matters dealing with RAQ's alleged management style. They include the dismissal of a Director from Lainson House who disagreed with the heating shutdown decision, a failure to provide proper channels of communication, alleged misrepresentation of facts to leaseholders, unwillingness to mediate, pursuit of Directors' own agenda and failure to communicate with leaseholders.

113. There is no doubt that the driving force of the Respondent's Board has been Mr Turner-Samuels, who until very recently was the Board's Chairman. Mr Turner-Samuels is clearly a forceful character as exemplified by the acerbic, and at times flippant or insulting nature of some of his emails to residents. However, with regard to representation and decision-making it must be remembered that the Respondent is a non-profit making residents' management company ultimately at the mercy of shareholders who can bring about a change in the composition of the Board and seek nomination as a Board member. Not everybody has accepted the invitation to become a shareholder but that is a choice. Furthermore, Directors of whom the chairman is one make Board decisions and not just the Chairman alone.

114. The removal of a Director, Mr Daniel Clark, who disagreed with the Lainson House shutdown is a matter of concern, but we do not know all the relevant facts surrounding that action which was endorsed at a shareholder AGM.

115. The Tribunal does not find it to be established that there is a failure to provide proper channels of communication between leaseholders and

RAQ although at times there is clearly confusion as to the respective roles of RAQ and Pepper Fox with the latter occasionally deflecting queries that it should be perfectly capable of dealing with. Indeed, it is sometimes difficult to discern whether the Applicants are directing criticism towards RAQ or Pepper Fox although ultimately the former is of course responsible for the actions or inaction of the latter. The Tribunal does not accept that it is reasonable to have channels of communication between leaseholders and individual Directors rather than through the Management Company Secretary or Chairman or the managing agents.

116. The Tribunal finds that the Board has communicated with residents through AGMs and regular newsletters. It does not accept that the Board has intentionally sought to misrepresent facts to residents. It is entitled to inform leaseholders that it has sought to act in good faith whilst acknowledging the Tribunal's earlier finding, which was in relation to the construction of the Lease. However, the suggestion to ODT solicitors by the Respondent in a letter of 13 July 2020 that proceedings could hamper sales of flats, or lead to legal costs being imposed on leaseholders through the service charge, was not helpful and calculated to induce Applicants not to pursue Tribunal proceedings. Nevertheless, the present proceedings do seem to have brought about an increase in information to leaseholders and a new Chairman of the Board and new Directors can be expected to bring new ideas and a fresh style of management to the Estate.

117. In their statement of case the Applicants relied on other matters that were not specified in the section 22 Notice as being grounds to justify the appointment of a manager. These mostly relate directly or indirectly to the maintenance charge. The Tribunal notes that these matters were not specified in the section 22 Notice and in one way or another are seeking to challenge aspects of the relevant maintenance charge costs incurred by the Respondent since the management takeover. As such the Tribunal considers that they are matters that are more properly the subject matter of the service charge regime contained in the Landlord and Tenant Act 1985. Nevertheless, both parties have made submissions with regard to these matters and the Tribunal will therefore comment on those submissions.

118. The first of these matters relates to the Heating Deposit. The Lease makes provision for every leaseholder to pay on purchase a heating deposit of £325, £425 or £525 depending on the number of bedrooms. Those sums are to be held in a separate account. The purpose of the Heating Deposit is that it can be used to offset any outstanding heat charges when a leaseholder sells. When RAQ became the Management Company on 22 February 2018 it thereby acquired all Chamonix's obligations under the Lease from that date. It appears that Chamonix became managing agents of RAQ until their contract was terminated from 30 September 2018. The Applicants calculate that as of that date the Heating Deposit account should have had in the order of £43,548 in it. The Applicants say that these funds have been "lost" by the Respondent through failing to secure them when Chamonix ceased to be the Management Company.

119. In a newsletter of January 2021, RAQ informed leaseholders that the Heating Deposits paid by original buyers and many subsequent buyers had been used by Chamonix in breach of trust to fund deficits in the heating account. Even then at the time of the handover the heating account was still overdrawn by £24,194. Following the issue of proceedings by RAQ against Chamonix for handover of money shown as in the accounts RAQ had, by consent order, dated 30 July 2020, obtained a payment of £26,131.18. Thereafter it informed leaseholders that any flat with an associated Heating Deposit would have it repaid by Pepper Fox and in future buyers would not be required to pay a Heating Deposit, it being considered uneconomical and unnecessary to take them. Whilst the Heating Deposits had clearly been used in breach of trust by Chamonix, they had been used to pay heating charges that would otherwise been billed to leaseholders.

120. The Tribunal finds that in these circumstances it cannot be said that RAQ is in breach of an obligation in the Lease. The payment of a Heating Deposit is an obligation of the leaseholder not the Management Company.

121. The Applicants state that the shutting down of the Heating System to Cawthorne House in August 2019 was done without the consent of the leaseholders of flats in that building although this has not been established. In any event it has already been established by the Tribunal decision of 11 April 2021 that a shutdown of the heating system is a breach of a relevant obligation in the Lease. (See paragraph 110 above).

122. The Applicants also argue that the Respondent disregarded the residents of Beves House who were affected by the shutdown and refer to what they describe as a lack of clarity from the Respondent as to the relationship between RAQ and Clarion (the social housing head leaseholder of Beves House). The Applicants produced communications from residents of Beves House who had been opposed to the shutdown but who said that because their freeholder is Clarion, they were unclear as to whom they should voice their concerns.

123. The Tribunal is not surprised that leaseholders of flats in Beves House are concerned as to their position but that is a matter for their landlord to explain. The Respondent tells us that the Estate excludes Beves House, whose freehold is owned by Clarion Housing. However, we are also told that Beves House shares some of the services operated for the benefit of the estate as a whole, which includes the heating system, and contributes to the cost of the same. Thus, although RAQ is not the Management Company under the leases of Flats in Beves House, it is clear that the shutdown of the heating system will have affected those leaseholders whose only contractual relationship is with their landlord.

124. In an email of 11 April 2021 to the Beves House Residents Association, Mr Turner-Samuels explained that RAQ sent Clarion the announcement regarding the 2020 shutdown. However, whilst, as noted above, it is clear that RAQ is not the landlord of Beves house leaseholders, its actions clearly affect those leaseholders even though there cannot be a breach of

covenant by RAQ under those leases. Mr Turner-Samuels' email explains this fact, but it does not explain the legal basis of the relationship between RAQ and Clarion with regard to the provision of the shared estate services, which clearly affects leaseholders of Beves House. However, this is not a matter relevant to the present Application, which relates to the Blocks managed by RAQ. (The housing association has declined to take shares in RAQ).

125. The Applicants also rely on the breach of the covenant for quiet enjoyment as amounting to a ground for it being just and convenient to appoint a manager. That covenant is a covenant by the landlord not to interfere with the lawful enjoyment of the property by the lessee. The Tribunal found that when the heating system was shut down that action also constituted a breach of the covenant for quiet enjoyment. However, it fundamentally concerned the same event, and the Tribunal has already decided that this event alone does not justify the making of a management order.

126. The Applicants also rely on other grounds for the making of an order. These grounds relate first to the way in which the Respondent has managed the Estate and second to the provision of services in a number of ways.

127. The grounds include the following matters. The Applicants allege that the managing agent wrongfully terminated the gas supply contract with e.on at 2.344p per kwh before entering into a more costly contract at 5.295p per kwh with Scottish Hydro. When it was drawn to its attention the Respondent assured the First Applicant that the matter would be addressed, and any extra charges reimbursed. The Applicants say no reimbursements materialised. Furthermore, they say that e.on imposed further charges for the premature determination of their contract.

128. The Respondent now offers the explanation set out at paragraphs 76 and 77 above and has produced an email from Pepper Fox's Finance Manager to RAQ's solicitor, Clare Whiteman, which purports to set out the position in more detail. This shows that the rate of 5.295p per kwh had been charged in error by Scottish Hydro and they had reduced it to 3.794p per kwh retrospectively to the start of the contract which resulted in a credit of £6,392.31 to the account. e.on had imposed a penalty rate because it said that proper notice of termination had not been given but Pepper Fox says it had not been warned of this. The Respondent says that it managed to negotiate a reduction in the increased e.on charges of 50%.

129. If e.on had refused to continue with the contract at the old rate the Respondent/Pepper Fox had no option other than to seek an alternative supplier. Whilst the wrong rate was charged that error was rectified retrospectively. However, the penalty rate of e.on should have been avoidable. The explanation given by Pepper Fox is by no means entirely clear and it appears to the Tribunal that with proper management the increased e.on costs could have been avoided or recovered in full had the required notice been given to e.on. There appears to have been a failure of communication between RAQ, Pepper Fox and e.on.

130. The Applicants state that, as from 30 September 2018, the Respondent replaced Chamonix Estates with Pepper Fox as managing agents without consulting Leaseholders. The Applicants state that the Respondent entered into an open-ended contract with Pepper Fox which the Applicants believe constitutes a Qualifying Long Term Agreement ("QLTA") and as such required consultation (under section 20 of the Commonhold and Leasehold Reform Act 2002).

131. The short answer to this is that, as submitted by the Respondent, there is no evidence that the contract with Pepper Fox is a QLTA and therefore required statutory consultation. We have not seen the contract but are told that it is terminable on one month's notice. The appointment of a managing agent is a matter for the Respondent and in any event, it has not been established that the appointment has resulted in a dramatic increase in service charge costs.

132. The Applicants also raise queries with regard to the validity of the Deed of Assignment whereby RAQ replaced Chamonix as the Management Company. However, that is not a matter for the Tribunal, which is faced with an Application, to which RAQ is the Respondent, for the replacement of RAQ with a Tribunal appointed manager on grounds relating to RAQ's management of the Building.

133. The Applicants argue that the managing agent was changed without any consultation with leaseholders. The Respondent says that this was within the Board's remit and the Board narrowed down eight applicants to three who were all interviewed before Pepper Fox was appointed. The Tribunal considers that the decision to change the managing agent was clearly within the Respondent's remit and as seen above this did not require a statutory consultation with leaseholders.

134. The Applicants argue that on change of managing agents a caretaker previously employed by Chamonix (or more accurately one of its subsidiaries) was transferred to Pepper Fox. This meant that because he had become seriously ill his costs (including sick pay, holiday pay and more recently redundancy pay) fell on the service charge whilst other cleaners were engaged and paid for the work. Caretaking costs had increased from £15,061 in 2017 to £39,328 in 2020. The Respondent simply says that it took legal and human resources advice on the implications of the long-term sickness of the caretaker. This raises the issue of whether specific service charge costs have been unreasonably incurred but these issues are more properly addressed under the different jurisdiction covered by section 27A of the Landlord and Tenant Act 1985.

135. The Applicants argue that there have been unreasonable increases in service charges since RAQ became the Management Company. However, the Respondents have demonstrated that whilst service charges have increased this has been a steady increase since the inception of the development and in the case of management fees there have been savings since the change of managing agent. Much of the recent increase relates to reserve fund contributions as to which see below.

136. The Applicants argue that reserve funds had been misallocated at the time of the handover from Chamonix, which led to a demand for increased service charge reserve payments as a result of what the Applicants describe as spurious adjustments to those reserves. The Respondent explains that because of an absence of detail as to the allocation of reserve funds provided by Chamonix it has had to adjust the balances in the way that it considers to be the most equitable. The Tribunal accepts that this was unavoidable in the absence of further details about the historic reserve accounts. However, as noted above, it is undeniable that reserve fund contributions have increased considerably in recent years.

137. As to the accounting issues raised by the Applicants, the Respondent has sought to explain, albeit not to the Applicants' satisfaction, how and why these costs occurred and what it had done to resolve the problems in question.

138. One vexatious issue has been how the cost of gas is charged. The Respondent says that there is a cash flow problem because gas is billed monthly but service charges only payable quarterly and therefore a certain level of float (the heat service reserve) must be built up to enable the bills to be paid on time. The Respondent builds the supplier's standing charge into the kwh rate billed to leaseholders. This includes the cost of the lost (wasted) heat to the building as well as the cost of the metered heat taken by the flats and a contribution to the heat service reserve. It is said that because the system efficiency changes as the seasons change the kwh rate also changes seasonally.

139. The Applicants strongly disagree with this methodology, which they say is not provided for by the Lease. They say that the difference between the gas expenditure and gas consumed by leaseholders could be included in the Estate schedule of the service charge ensuring that there would always be funds to pay the bills. The argument about the rival methodologies of how to charge for heat is mainly directed to whether the shutdown could be justified on the ground that it effected cost savings. However, that argument is sterile now to the extent that the Lease does not permit shutdowns.

140. Nevertheless, the Applicants are justified in arguing that the Respondent's method of charging and billing appears not be in accordance with the Lease, which obliges the leaseholder to pay a Maintenance Charge and a Heating Charge. The Maintenance Charge provided for by the Lease includes the cost of providing "Heat to the Property [i.e. the Flat] and the rest of the Block together with meter reading, the collection of charges and associated billing as appropriate or necessary" (Schedule 5 paragraph 9). However, the Heating Charge, which we are told is billed quarterly, is defined in Clause 2 of the Lease as "The element of the Maintenance Charge payable for the provision of heat and hot water to [the Flat]." Paragraph 1(a)(v) of the Third Schedule provides that "heating usage will be estimated charged on a metered basis measured by the meter readings

on the meters that are in place in [the Flat] and all other Flats within the Block."

141. It is clear that the Respondent recovers the cost of heat to the Building, which does not fall within the Heating Charge (which is confined to heat used in the Flat) from leaseholders and that appears to be through the Heating Charge by the method described by Mr Turner-Samuels. Although the Applicants rightly draw attention to this deviation from the terms of the Lease it has not been established that ultimately the total sums paid for heat by the leaseholders (after estimated expenditure is adjusted in the light of actual expenditure) exceeds the cost of gas charged by the supplier (plus associated recoverable charges). Nevertheless it seems clear that the Respondent has not fully addressed the Applicants' concerns on this matter.

Conclusion

142. In the light of the Tribunal's earlier determination, the fundamental issue is whether the Applicants have established that it is just and convenient for an order to be made. In adjudicating that matter the Tribunal has examined the evidence adduced and the arguments sustained by the Applicants and Respondent. In the beginning the Applicant's concern was with regard to the summer heating shutdown(s) and associated matters. These related to the legal matter of whether the Lease permitted a shutdown and if so in what circumstances. That matter was resolved by the Tribunal's preliminary determination. At the hearing of the remaining matter, that of whether an order should be made, the Applicants continued to pursue the issues surrounding what might have or have not justified a shutdown had that been permitted by the Lease. These issues included the heating system and its defective design and any claimed for cost savings in a shutdown and whether the Respondent should have consulted leaseholders. The Applicants then sought to widen their case to cover other actions taken by the Respondent Management Company since its inception. The grounds relied on have all been dealt with above.

143. The Applicants have pursued their case vigorously, without legal representation, and their belief in the justice of their case appears to be genuine, despite suggestions by the Respondent that the Applicants are motivated by selfish concerns.

144. However, whilst the Tribunal is satisfied that the Respondent can be criticised for some of its management decisions, and the way in which the division of responsibility between its Board and the appointed managing agents has been operated in practice, it does not consider that the level of management provided by the Respondent has been consistently so poor as to justify its replacement with a Tribunal appointed manager. The appointment of a manager would remove control of the Estate from a residents' management company that had itself been formed with a view to ousting an unpopular management company.

145. It must be remembered that the Respondent is an unpaid voluntary body. Whilst its directors (save for the former director, Mr Clark) are not professional property managers they have appointed professional managing agents for any of whose shortcomings the Respondent is ultimately responsible. Indeed, the Tribunal was surprised at the absence of participation by any officer of Pepper Fox in the presentation of the case for the Respondent. Nevertheless, although one might criticise how RAQ and Pepper Fox have managed some service charge matters, there is little doubt that many problems are legacy issues that have come about as a result of Chamonix's accounting practices and mismanagement. Indeed, Chamonix was more disapproved of than approved of as a manager by leaseholders.

146. It is of course possible to criticise RAQ for failing to satisfy themselves fully by due investigation as to the position of the accounts as held by Chamonix before the transfer of management company. However, it is clear that Chamonix had withheld vital information prior to the handover and RAQ did spend much time and energy thereafter in pursuing Chamonix for compensation. It also obtained compensation from Taylor Wimpey for promised solar panels that failed to materialise.

147. In the case of some disputed isolated service charge costs this can be dealt with more appropriately by application under other jurisdictions, whilst some other matters have stemmed from the drafting of the Lease, which has created ambiguity in places. Nevertheless, the Tribunal considers that it would have been helpful if the Respondent had engaged more fully with the Applicants in explaining why it did not accept the Applicant's suggestions as to how heat charges should be calculated and charged.

148. Looking to the future the Board has recently sought to refresh itself with new members and a new Chairman who are likely to bring a renewed approach to the Management of the Estate and who are ultimately answerable to shareholders and non-shareholder leaseholders. It is true that many of the Directors so far have been non-resident and that is a matter of composition that should be addressed as far as possible. It is also hoped that leaseholders will be told in clear terms as to what the division of responsibilities is between RAQ and the managing agent and how to contact both.

149. The Tribunal is of course aware that it has found the Respondent to be in breach of an obligation in the Lease with regard to the heating shutdown, but that decision was concerned with whether the Lease contained an unqualified obligation to provide heat and not with whether such action would have been reasonable had it been permitted by the Lease. The Respondent who was acting in good faith has given an undertaking that the breach will not be repeated.

150. Furthermore, although the present Application is supported by most leaseholders in Lainson House, who were for the most part aggrieved by the heating shutdown, a majority of those other residents on the Estate who have indicated their view appears to be opposed to the Application. It

would need very strong reasons for a manager to be appointed for the whole Estate at the instigation of residents in one Block and no evidence of majority support from leaseholders of the other Blocks.

151. Had the Tribunal found it to be just and equitable to make an order it would have been willing to appoint Mr Hollywood on appropriate terms, but in the light of the Tribunal's decision it has not deemed it necessary to enter into details as to that matter in this document.

Section 20C Application

152. In the case of residential service charges, including an application under the 1987 Act, section 20C of the Landlord and Tenant Act 1985 enables a tenant to apply for an order that all or any of the costs incurred by a landlord [including a Management Company that is party to the Lease] in connection with any proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

153. The matter of whether the Lease permits a landlord to seek recovery of costs by way of a future service charge demand is answered by paragraph 9 of Part II of Schedule 6 to the Lease which specifies that one of the heads of cost that is recoverable by way of the Maintenance Charge is

"The costs incurred by the Management Company in bringing or defending any actions or other proceedings against or by any person whatsoever."

154. It is with a view to avoiding this outcome that the Applicants have made a section 20C application. The first issue therefore is the matter of for whose benefit a section 20C order may be made by the Tribunal irrespective of the second matter of the merits, which is considered below. The section 20C application form states that the Applicant is Ms Suzanne Eames. In section 2 of the form Ms Eames ticked a box to the effect that she was also making the application for the benefit of other persons. As requested by the form she specified those other persons by setting out their names and addresses. In that list Ms Eames, Mr Exall and Ms Riot are separated out at the top of the list and described as applicants. Below their names are the names and addresses of the leaseholders of the following flats in Lainson House, namely:

Flat 3	Mr T Bishop & Ms E Magrowska
Flat 5	Mr T & Mrs A Beadle
Flat 6	Mr N & Mrs L Peacock
Flat 7	Mrs L Peacock
Flat 8	Mr John Coe
Flat 9 -11	Mr D Law & Mrs K Law
Flat 12	Mr P Edwards and Mrs C Edwards
Flat 13	Ms E Baker & Mr P Lucas
Flat 14	Mr L Higham & Mrs C Higham

Flat 15	Mr H Griffiths & Mrs A Griffiths
Flat 16	Mr K Mackenzie & Mr C Tietjen
Flat 17	Mr R Clark
Flat 18	Mr M Buck & Mrs H Buck
Flat 20	Mr M Penfound & Mrs E Penfound

155. Below the list is a statement as follows:

> "Please note: Flat 4 (Mr J Woodward) & Flat 19 (Mr M Turner-Samuels) are directors of RAQ EML who mandated this shutdown although I understand from Mr J Woodward that he did not support the shutdown.
>
> Flat 17 (Mr R Clark) was a RICS accredited director who was opposed to the shutdown on legal grounds and who was excluded from any company dealings by Mr M Turner-Samuels."
>
> However, Ms Eames' answer continued, "Please note there are also 5 other blocks in the estate impacted by this but these lessees are unknown to me:
>
> Cawthorne House 35 flats; Blanche House 23 flats; Thomas House 18 flats; Taaffe House 9 flats; Beves House 14 flats."

156. It is therefore tolerably clear that the section 20C Application is made by Ms Eames, together with Mr Exall and Ms Riot (both of whom participated as Applicants in the section 24 proceedings) and that the Tribunal therefore has jurisdiction to make an order in favour of any or all of those applicants. But is or are there "any other person or persons specified in the application" for the purpose of enabling the Tribunal to make an order in respect of any or all of those persons?

157. Neither party raised, or made submissions on, this issue of the scope of section 20C, in so far as it relates to "other persons", in the written or oral submissions. The issue was explored by the Upper Tribunal in the case of *Plantation Wharf Management Limited v Fairman and others* [2019] UKUT 0236 (LC). In that case, which also involved a multi-block development, the First-Tier tribunal made a section 20C order not only in favour of a leaseholder applicant (Mr Donebauer), but also in favour of other persons (not all leaseholders in the same block) whose names and addresses were provided by Mr Donebauer in his application. That order was not appealed. However, another leaseholder applicant (Mr Low) had made his application for the benefit of himself and "all other leaseholders [at the development]" stating "I do not have details of all names and addresses."

158. The FTT made an order in favour of Mr Low and all other leaseholders at the development. On appeal the Upper Tribunal overturned that decision stating (at paragraph 156)

> "The jurisdiction of the FTT is entirely statutory. It is clear from section 20C, the statutory provision conferring jurisdiction in this case, that

jurisdiction is based and founded upon the application itself. In the absence of an application, there is no jurisdiction; and once an application is made, it is from the application that the jurisdiction of the FTT is exclusively derived. The identity of the applicant is crucial when one comes to consider the FTT's power to make a section 20C order. It is not disputed that the applicant tenant may apply for such an order, and so too may persons who are specified in the tenant's application. "Specified" does not necessarily mean "named", and there may be instances where, despite the person not being named as such, that person is "specified" by being readily identifiable by other means."

159. Having considered the issues of principle the judge, His Honour Stuart Bridge, continued

"It seems therefore that to require a person "specified" under section 20C to have given consent or authority to the tenant making the application on their behalf is entirely consistent with basic jurisdictional principles. I therefore conclude that for a person to be validly "specified" under section 20C(1) that person must have given their consent or authority to the applicant in whose application the person is specified (that is named or otherwise identified)."

160. Thus, to be a possible beneficiary of a section 20C order a "specified" person who is not an applicant must have given the applicant consent or authority to seek an order for their benefit. In the present case the Tribunal is satisfied that it has jurisdiction to make a section 20C order in favour of Ms Eames (Flat 2 Lainson House, Mr Exall and Ms Riot (Flat 1 Lainson House) and the leaseholders of the following flats: Flats 5,8,9,10,11,12,13,14,15,16,17 Lainson House, Flat 5 Thomas House and Flats 21 and 30 Cawthorne House. Those leaseholders had all given their consent or authority to the Applicant by completing and returning to the Tribunal a form to that effect.

161. With regard to the second matter of whether the Tribunal should make a section 20C order and in favour of whom, the Tribunal's discretion is wide and unfettered. However, in exercising that discretion the Tribunal must have regard to what is just and equitable in all the circumstances.

162. The Applicants base their section 20C application on the grounds relied on in the application for appointment of a manager. They say that they have tried to resolve matters by reasonable means and have invested much time and effort in so doing at considerable emotional cost.

163. The Respondent denies that it has refused to engage with the Applicants and says that three meetings with owners have been held since Pepper Fox took over together with a meeting with Lainson House residents in February 2020 and an AGM in October 2020 as well as a meeting on 21 June 2021. The Respondent says that the meeting in February 2020 ran out of time and an offer by the Respondent of a further meeting was not taken up.

164. It is clear that if an order were made in favour of the Applicants it would mean that the Respondent's costs incurred in connection with the proceedings would fall on the Respondent who could then seek to recover those costs through the service charge from all other leaseholders. The issue therefore is whether this would be just and equitable.

165. In the case of *Conway v The Jam Factory* [2013] UKUT 0592 (LC), the Deputy President of the Upper Tribunal (Lands Chamber), Martin Rodger QC, stated that, when considering an application under section 20C, it was "essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make".

166. In the present case the Applicants failed to persuade the Tribunal to make an appointment of manager order and in those circumstances, it would be unusual to grant a blanket section 20C order unless there were good reasons. The Applicants have not established such reasons. However, the Application to obtain a determination of whether the Lease permitted a summer shutdown of the CHP system was supported by the Respondent and the Applicant succeeded on that issue. The Tribunal therefore considers that the costs incurred by the Respondent relating to that stage of the proceedings should not be recoverable by way of future service charge from the Applicants and the other specified persons. With regard to the rest of the proceedings, as indicated above, the Tribunal does not consider that it would be just and equitable for a section 20C order to be granted in respect of the Respondent's costs.

167. Because the section 20C decision above raises a matter that was not aired by either Applicant(s) or Respondents the decision on the section 20C application shall be treated as provisional. It is however open to the parties to make written submissions in relation to the order the Tribunal is contemplating at paragraph 166 above or indeed on any other consequential matter within 14 days of the date of this decision. In the event of no such submissions being received, the Tribunal shall confirm an order to such effect.

Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002

168. The Respondent accepted that the Lease does not permit recovery of costs from any individual leaseholder(s) and therefore an application for an order under paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 is not necessary.

Right to 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, that 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.

Annex: The relevant statute law

Landlord and Tenant Act 1987

21 Tenant's right to apply to [tribunal] for appointment of manager.

(1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to the appropriate tribunal for an order under section 24 appointing a manager to act in relation to those premises.

(2) Subject to subsection (3), this Part applies to premises consisting of the

whole or part of a building if the building or part contains two or more flats.

(3) This Part does not apply to any such premises at a time when—

(a) the interest of the landlord in the premises is held by
(i) an exempt landlord or a resident landlord, or
(ii) the Welsh Ministers in their new towns residuary capacity, or
(b) the premises are included within the functional land of any charity.

(3A) But this Part is not prevented from applying to any premises because the interest of the landlord in the premises is held by a resident landlord if at least one-half of the flats contained in the premises are held on long leases which are not tenancies to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) applies.

(4) An application for an order under section 24 may be made—
(a) jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section, and
(b) in respect of two or more premises to which this Part applies;
and, in relation to any such joint application as is mentioned in paragraph (a), references in this Part to a single tenant shall be construed accordingly.

(5) Where the tenancy of a flat contained in any such premises is held by joint tenants, an application for an order under section 24 in respect of those premises may be made by any one or more of those tenants.

(6) An application to the court for it to exercise in relation to any premises any jurisdiction to appoint a receiver or manager shall not be made by a tenant (in his capacity as such) in any circumstances in which an application could be made by him for an order under section 24 appointing a manager to act in relation to those premises.

(7) References in this Part to a tenant do not include references to a tenant under a tenancy to which Part II of theLandlord and Tenant Act 1954 applies.

(8) For the purposes of this Part, "appropriate tribunal" means—
(a) in relation to premises in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
(b) in relation to premises in Wales, a leasehold valuation tribunal.

22 Preliminary notice by tenant.

(1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat

contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on—

(i) the landlord, and

(ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.

(2) A notice under this section must—

(a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which any person on whom the notice is served may serve notices, including notices in proceedings, on him in connection with this Part;

(b) state that the tenant intends to make an application for an order under section 24 to be made by the appropriate tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with;

(c) specify the grounds on which the tribunal would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;

(d) where those matters are capable of being remedied by any person on whom the notice is served, require him, within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and

(e) contain such information (if any) as the Secretary of State may by regulations prescribe.

(3) The appropriate tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

(4) In a case where—

(a) a notice under this section has been served on the landlord, and

(b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage,

the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.

24 Appointment of manager by 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 the order in all the circumstances of the case;

(aba) where the tribunal is satisfied—

(i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, 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.

(2ZA) In this section "relevant person" means a person—

(a) on whom a notice has been served under section 22, or

(b) been dispensed with by an order under subsection (3) of that section.

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

(a) if the amount is unreasonable having regard to the items for which it is payable,

(b) if the items for which it is payable are of an unnecessarily high standard, or

(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge

within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(3) The premises in respect of which an order is made under this section may, if the tribunal**]** thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4) An order under this section may make provision with respect to—

(a) such matters relating to the exercise by the manager of his functions under the order, and

(b) such incidental or ancillary matters,

as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide—

(a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;

(b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;

(c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

(d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.

(7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—

(a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

(b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

(8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(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.

(10) An order made under this section shall not be discharged by the appropriate tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.