



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

Case reference : **LON/00AG/LAM/2020/ 0028**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **Melrose Apartments, 6 Winchester
Road, London Nw3 3 NT**

Applicant : **Michael Maunder Taylor (1)
Various lessees as listed in the tribunal
joinder decision dated 26th July 2021
(2)**

Representative : **Mr de la Piquerie of Counsel**

Respondent : **Cantelsa (IOM) Limited**

Representative : **Mr Jonathan Upton of Counsel**

Type of application : **Variation of an Order of Appointment
of Manager**

**Tribunal
member(s)** : **Judge H Carr
Mr Kevin Ridgeway**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **21st December 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was **V: CVPREMOTE**. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a

bundle of 204 pages, the contents of which I have noted. The order made is attached as an appendix at the end of these reasons.

The application

1. The Applicant, Mr Michael Maunder Taylor seeks an order varying the decision and order made by the tribunal dated 8th March 2021. The Applicant says that the application is motivated by the challenges he has faced since his appointment which he says cannot be dealt with on the current terms. The application is supported by those leaseholders who have been joined into the application.

The hearing

2. The hearing took place on 20th September 2021
3. The Applicant attended the hearing together with his representative, Mr de la Piquerie of Counsel. Two leaseholders, Ms Rouach and Ms Leadercomer also attended
4. The Respondent was represented by Mr Upton of Counsel.
5. Huggle Ltd also attended the hearing.

The background

6. The Property is a purpose-built development constructed in 2010. It comprises 51 private flats, 25 housing association flats, an underground car park and commercial premises on the ground floor.
7. The Applicant is the tribunal appointed manager of the property, appointed by a decision and order dated 8th March 2021. That order was varied by a decision dated 16th June 2021.
8. The Respondent is the freehold owner of 157A Fellows Road and the leasehold owner of 2-20 Winchester Road and 157A Fellows Road.
9. Huggle Ltd is the former tenant of commercial units within the property.
10. A preliminary issue arose in relation to the status of Mr Upton because of a lack of clarity of the status of the Respondent as it was in receivership and its ability to instruct counsel.
11. The Tribunal notes that Mr Upton has represented the Respondent in previous proceedings without objection, that he had been instructed prior to the receivership and that the Applicant's primary concern was whether the Respondent would be giving evidence.

12. In the circumstances of this particular application the Tribunal considered it was appropriate for Mr Upton to continue to represent the Respondent.

The issues

13. The issues before the tribunal are whether the management order be varied as follows:
- (i) To include additional wording in relation to any sale or transfer of any of its interest in the Property
 - (ii) To include additional provisions in relation to insurance
 - (iii) To include additional provisions to deal with alleged shortfalls in the recovery of service charges
 - (iv) To include a provision requiring the Respondent to pay to the Manager sums which were incurred as a result of instructions by the Respondent of third parties to investigate cladding
 - (v) Whether other additional terms should be included which the Manager considers would facilitate his role

The Law

14. The power to vary an existing order is set out in s.24(9) of the Landlord and Tenant Act 1987. The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section...”
15. The respondent made several submissions in relation to the scope of this power as follows:
- (i) A management order “... does not confer any proprietary interest on the [manager]” (see *Octagon Overseas Ltd v Coates* [2017] UKUT 190 (LC)); it does not change any of the existing ownership structure so that property which belongs to the landlord (i.e. retained land) remains the property of that landlord.
 - (ii) A management order must not be used to punish a landlord: *Octagon Overseas v Various Leaseholders* [2016] UKUT 470 (LC). Thus, the functions conferred on a manager should:
 - (a) reflect the rights that leaseholders are entitled to under the terms of their leases: Sennadine Properties.

- (b) relate both to the failings alleged in the s.22 notice and the subsequently proven management failings: *Octagon Overseas Ltd v Coates and Queensbridge Investments*.
- (c) be justified by reference to a particular finding made by the tribunal: *Octagon Overseas v Various Leaseholders*.
- (d) be directed to resolving the underlying problems which led to the order being made in the first place: *Octagon Overseas v Various Leaseholders*.

The issues in the application

Additional wording in connection with notification of the completion of the sale or transfer of any of its interests in the property

- 16. The Applicant seeks to vary the order so as to include additional wording as follows: *The Respondent shall immediately on the sale or transfer of any of its interests in the Property notify the Manager of the completion of the sale/transfer thereof and provide him with the name and contact details of the third party purchaser.*
- 17. The Applicant says that this is necessary to enable the Applicant to properly manage the building.
- 18. The Respondent does not oppose this variation.

The decision of the Tribunal

- 19. The Tribunal determines to allow the variation.

The reasons for the decision of the Tribunal

- 20. The Tribunal considers it is a useful and common sense variation and it is not opposed by the Respondent.

Insurance

- 21. The Applicant told the Tribunal that he had faced some difficulty when seeking to change the broker who arranges the insurance policies for buildings and engineering insurance because the change of agency was opposed by the Respondent. The Respondent has now agreed to allow the change of broker to take place and the Applicant has been able to transfer the insurance polices to his preferred agent. Nonetheless he

argues that the provisions he seeks would strengthen his ability to better manage the property in the face of similar challenges

22. The provisions are set out at paragraph 7 of the Applicants statement of case (page 29 of the hearing bundle) and are as follows:

- (i) The duty and power to take out in the manager's own name, in accordance with the terms of the leases, insurance policies in relation to the buildings and the contents of the common parts of the Premises with a reputable insurer and provide a copy of the cover note to all lessees and the Respondent on request
- (ii) The duty and power to manage or provide for the management, through a broker, of any claims brought under the insurance policies taken out in respect of the Property with the insurer(s).
- (iii) The power to appoint professionally qualified persons (such as insurance brokers) as the manager may reasonably require to assist him in the performance of his functions.
- (iv) The power to appoint any agent to carry out any such function or obligation which the manager is unable to perform himself or which can be more conveniently done by an agent.
- (v) An order which prohibits the Respondent from exercising any management functions (which includes placing the insurance) in respect of the Property where the same are the responsibilities of the Applicant under the Order.
- (vi) An order that the Respondent and any agents thereof shall give reasonable assistance and cooperation to the Applicant in pursuance of his duties and powers under the Order and shall not interfere or attempt to interfere with the exercise of any of the said duties and powers.
- (vii) The power for the Applicant to receive payments arising from insurance claims and to apply them to the reinstatement of any loss to distribute such payments as appropriate to the beneficiaries of such claims.

23. The Applicant submits that each of the variations sought are common and necessary to permit the Manager to properly undertake his functions.

24. The Applicant also says that no harm can come of making the variation as non-interference is something that the Manager is entitled to and if the Respondent is not going to interfere then the Respondent has nothing to fear. The Applicant refers the Tribunal to an email at 191 to support his allegation that the Respondent did interfere in the transfer of insurance. In addition, non-interference is essential to the proper performance of the Manager's functions.
25. The Respondent does not consider that there is a need for a variation of the insurance clause. The Respondent denies that there was interference with the insurance arrangements and considers that the Order is clear. However he objects to paragraph (vi) of the proposed variation. In particular he considers that the positive obligation in that paragraph is too bold a proposal and could not be enforced.
26. The Respondent observes that the proposed provisions are not limited to the Manager's obligations and powers in respect of insuring the premises.
27. The Applicant was not content with a negative obligation

The decision of the Tribunal

28. The Tribunal determines to make the variation sought.

The reasons for the decision of the Tribunal

29. The proposed variation clarifies the powers of the Manager in relation to insurance which in the light of the relationship between the parties is a necessary clarification.
30. The Tribunal notes what the Respondent says about the unenforceability of the positive obligation in paragraph (vi) but does not consider that this is a bar on making the variation sought.

Orders to compensate for shortfalls in the recovery of service charges

31. The Applicant says that the Manager faces two difficulties in relation to service charges and it seeks variations of the order to deal with those difficulties.

(i) Flat 51 at the Property

32. The Applicant says that the problem arose because in 2015 the Respondent agreed with the owners of Flat 51 to limit their service charge liability to a sum of £14,000 per annum for the service charge years ending 30 June 2016, 2017 and 2018. The Respondent subsequently demanded service charges of more than £14000 and it failed to make the necessary adjustments.

33. The Applicant relies on *Ursdorfer v Octagon Overseas & Otrs* LON/00BG/2021/0005. The Applicant argues that this case demonstrates that the Tribunal had jurisdiction under s.24 of the 1987 Act to order a landlord to pay to a manager shortfalls in recovery from leaseholders and that it should exercise its jurisdiction if doing so. 'ensures that the Manager has sufficient funds available to cover the costs of discharging his or her functions'.
34. The Applicant argues that the facts in this dispute all more compelling than in *Ursdorfer* because the problems faced by the Manager have been caused by the Respondent.
35. The Respondent objects to the variation sought on two grounds. First he argues that the tribunal has no jurisdiction to make the order sought. While it is accepted that a manager may be granted the power to collect an appropriate contribution towards the cost of providing services from the landlord in respect of commercial premises which are vacant here what the Applicant is seeking to do relates to service charges that were payable by a tenant of a dwelling to the Respondent prior to the commencement of the management order.
36. In *Ursdorfer* the bad debt was money that was owed after the commencement of the order. In this case it is different. The order the Applicant seeks is an order the Respondent to pay money to the Manager for the period 2016 -18, two years before the order commenced.
37. The Respondent also argues that there is in fact no sums owing. The agreement made between Sandrove Brahams, the Respondent's managing agent (without the Respondent's knowledge or agreement), and the lessee of Flat 51 was as a result of that lessee having been overcharged and hence overpaid its service charge contribution. The agreement sought to reduce the lessee's actual service charge contribution in future years to recoup the past over payment. There is no shortfall in cash terms as the service charge had been paid in the earlier years (due to the overpayment).

(ii) Service charges of the commercial tenant Huggle

38. Huggle was the commercial tenant of commercial units within the property under a lease dated 13 August 2010. The Applicant says that it appears that Huggle exercised a break clause in the Lease. This led to a break date of 13 November 2020 (a different date from the one in the lease). There were subsequent negotiations between the Respondent and Huggle which appeared to have broken down with Huggle vacating the Premises on 28th July 2021.
39. The Applicant says that this left the Manager with two problems. First Huggle was in arrears of service charges to the Respondent in the amount of £17,265.04 and the Applicant says that the Respondent

should have pursued Huggle for this sum. The Applicant therefore seeks an order requiring the Respondent to pay the £17,265.03 to the Manager.

40. Secondly the Applicant argues that during the negotiation period Huggle seems to have occupied the premises under a tenancy-at-will with the terms of that tenancy likely to have been terms set out in an unexecuted document. The Applicant says that the service charge to be paid under the unexecuted document appears to be 50% of what it paid under its former lease. It also appears to the Applicant that Huggle paid no service charge during the period 13th November 2020 to 28th July 2021. The Applicant says that either Huggle owes £20,865.26 p in service charges (the full amount under the Lease) or £10,432.63(which would be 50% of the pervious charges). The Applicant therefore asks for an order that the Respondent should pay the sum of £20,865.26 to the manager.
41. The Respondent says that the Manager should demand and collect the service charge from Huggle. The Respondent says that at no time has Huggle occupied part of the premises without being liable to pay a service charge as the draft tenancy at will was never executed. Therefore themanager is entitled to recover a service charge from Huggle.
42. More generally and in relation to both issues, the Respondent says the service charge funds have been transferred to the manager and that the lessees are not entitled to set-off any claims they may have against the landlord (e.g. a restitutionary claim for an overpayment of service charges) against any service charges demanded by the manager: *Maunder Taylor v Blaquiere* [2003] 1 W.L.R. 379.
43. The Applicant responds with four submissions
 - (i) The Respondent has failed to understand the position caused by allowing Huggle to remain in possession during negotiations for the grant of a new tenancy
 - (ii) There is no good reason why it should be the Manager who has to take on the role of trying to work out what the agreement was during Huggle's occupation after the break of the Lease
 - (iii) The manager would not be able to establish all the facts necessary to pursue Huggle for the monies.
 - (iv) The idea that the Manager should recover the shortfall from the Respondent was an idea which was advanced by Philip Ross solicitors acting for the Respondent by email on 25 May and the Respondent should be held to it.

44. There is a further problem that the Applicant says is facing the Manager. Units A and B are currently empty. The current Order provides that the Respondent should pay a service charge to the Manager in respect of empty units.

The decision of the Tribunal

45. The Tribunal determines not to make the orders sought by the Applicant

The reasons for the decision of the Tribunal

46. The Tribunal accepts the argument of the Respondent in relation to its power to make Orders that relate to debts preceding the commencement of the Order.
47. It also agrees in relation to the alleged debt from Huggle that postdates the order, that it is premature to make an order in the terms sought and that the Applicant should seek to collect the service charges from Huggle that it considers it is owed.

Professional fees incurred by the Respondent in relation to investigation of cladding

48. The Applicant argues that the Order requires variation to deal with charges the Respondent incurred because of the instruction by the Respondent of third parties.
49. Block A, C and D at the Property are let to Origin Housing Limited under a lease dated 27 May 2009. Under that lease Origin is responsible for the repair and maintenance of the external structures of those blocks.
50. Despite the lease placing these obligations on Origin the Respondent instructed work to be done to the exterior of those blocks which was in relation to cladding. The work resulted in charges totalling £36,660.
51. The Respondent has not paid those invoices. Origin has no liability to pay those invoices
52. The Applicant argues that the Order, under paragraph 3 of the Directions attached to it, make the liability a liability of the Manager. If that is correct then the Manager asks the Tribunal to order the Respondent to pay the sum to the First Applicant as the Respondent is to blame for the problem.
53. The Respondent says that these costs were paid from the service charge account prior to the commencement of the management order. The manager is not liable to pay the fees and has not “inherited a liability to pay these fees”. The Tribunal does not have jurisdiction to order the Respondent to pay monies to the manager in respect of these costs.
54. The Respondent also argues that it would be premature to make an order as regards this matter until the issue is clarified with Origin.

55. Alternatively, the Tribunal should order Origin to pay the said costs as they were incurred for its benefit.

Decision of the Tribunal

56. The Tribunal determines not to make the orders sought by the Applicant

The reasons for the decision of the Tribunal

57. The Tribunal agrees with the Respondent that it has no jurisdiction to make orders relating to periods prior to the making of the Management Order. It also considers that it would be premature to make an Order before there is clarity on Origin's liability.

Other additional terms

58. Paragraph 22 of Applicants Statement of Case sets out a number of additional terms that the Applicant included in its draft management order but were not provided for in the order made by the Tribunal.

59. The provisions are as follows:

- (i) The power to appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him the performance of his functions.
- (ii) The power in his own name to bring, defend or continue any legal action or other legal proceedings in connection with this Order. The Applicant shall be entitled to an indemnity for both his own costs reasonably incurred and for any adverse costs order out of the service charge account.
- (iii) The power to enter into or terminate any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of his functions.
- (iv) The power to open and operate client bank accounts in relation to the management of the Property and to invest monies pursuant to his appointment in any manner specified in the Service charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to s.42 of the Landlord and Tenant Act 1987.
- (v) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the

Respondent or any Lessee owing sums of money under his Lease.

- (vi) The power to borrow all sums reasonably required by the Applicant for the performance of his functions and duties and the exercise of his powers under this Order in the event of there being any arrears, or other shortfalls of service charge contributions due from the Lessees or any sums due from the Respondent, such borrowing to be secured (if necessary) on the interests of the defaulting party (i.e. on the leasehold interest of any Lessee or the freehold/leasehold interests of the Respondent) PROVIDED THAT that Applicant shall not secure any borrowing as aforesaid without the consent of the defaulting party (not to be unreasonably withheld) or in default of that consent, without further Order of the First-tier Tribunal.
- (vii) From the date of the Order, no other party shall be entitled to exercise a management function in respect of the Property where the same is a responsibility of the Applicant under the Order.
- (viii) From the date of the Order, the Respondent, whether by itself or any agent, servant or employee, shall not demand any further payments of service charges, administration charges or any other monies from the Lessees, such functions having been transferred to the Applicant.
- (ix) The Respondent and the Lessees and any agents or servants thereof shall give reasonable assistance and cooperation to the Applicant in pursuance of his duties and powers under the Order and shall not interfere or attempt to interfere with the exercise of any of his duties and powers
- (x) The obligations contained in the Order shall bind the Respondent's or any Lessee's successor in title and the existence and terms of this Order must be disclosed to any person seeking to acquire an interest in the Property.
- (xi) In the event of any monies being owed by the Respondent, the Applicant shall be entitled to receive any premiums payable upon the grant of a new lease under Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 or any subsequent enactment in full or part payment of any debts owed by the Respondent.

- (xii) The right to treat the service charge financial year as commencing on 15th March 2021 and thereafter running from 15th March to 14th March in each year the Order is in place.
 - (xiii) The Applicant shall be entitled to an indemnity for his own costs reasonably incurred and for any adverse costs order out of the service charge account, and such costs and adverse costs shall be payable by the Respondent and/or the Lessees as a service charge according to the provisions of the Leases and the Order
60. The Applicant argues that the changes are common and necessary for the proper performance of the scheme of management created by the Order, and that they are not unfair to the Respondent in any way.
61. The Applicant also says that events have shown them to be necessary. He draws the attention of the Tribunal to correspondence disputing the power of the Manager to appoint professionals when it is clear from the terms of the Order that it does have the power.
62. The Respondent makes the following points in relation to the additional provisions.
- (i) In sub-paragraph (vi) the words ‘(not to be unreasonably withheld)’ should be deleted. Otherwise the proposed variation would not be proportionate to the aim sought to be realised and it would not therefore comply with Article 1 of the First Protocol to the ECHR,
 - (ii) In sub-paragraph (viii) the words ‘or any other monies from the Lessees’ should be deleted as they are otiose and are liable to cause uncertainty.
 - (iii) In sub-paragraph (ix) the words ‘shall give reasonable assistance to and cooperation to the Applicant (Manager) in pursuance of his duties and powers under the Order’ (not to be unreasonably withheld)’ are not appropriate and should be deleted. The tribunal has appointed a manager; it cannot and should not impose duties on the Respondent as proposed by the first part of this proposed variation.
 - (iv) Subparagraph (x) should be omitted. The first part has no effect in law. As to the second part, it is not appropriate for the tribunal to impose such an obligation on the Respondent or to otherwise interfere with how the Respondent should respond to pre-contractual enquiries. Further it is unclear how any such provision could be enforced.

- (v) Sub-paragraph (xi) is not proportionate to the aim sought to be realised and would therefore not comply with Article 1 of the First Protocol of the ECHR.

Decision of the tribunal

63. The Tribunal determines to make the variations sought subject to the deletions argued for by the Respondent.

The reasons for the decision of the Tribunal

64. The Tribunal is concerned that the powers of the Manager must be reasonable and proportionate to the issues in hand and agrees with the Respondent that the powers without the proposed deletions are too wide.
65. The amended Management Order is attached.

Name: Judge H Carr

Date: 21st December 2021

Rights of appeal

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

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

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

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

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

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

Amended Management Order

The terms of the management order (dated 8th March 2021 as varied by tribunal decisions dated 16th June 2021 and 21st December 2021 with paragraph numbers updated following 21st December 2021 decision).

1. In accordance with section 24(1) Landlord and Tenant Act 1987 Mr Michael Maunder Taylor of Maunder Taylor ('the Manager') is appointed as manager of the property at Melrose Apartments, 6 Winchester Road, London, NW3 3NT ("the Property").
2. The order shall continue for a period of three years from 15th March 2021. Any application for an extension must be made prior to the expiry of that period. If such an application is made in time, then the appointment will continue until that application has been finally determined.
3. The Manager shall manage the Property in accordance with:
 - (a) The directions and schedule of functions and services attached to this order;
 - (b) The respective obligations of the landlord and the leases by which the flats at the Property are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - (c) The duties of a manager set out in the Service Charge Residential Management Code ('the Code') or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993.
4. The tribunal additionally requires the Manager, in his initial report to the tribunal, to set out how management charges are to be apportioned.
5. The Manager must register this Order against the Landlord's registered title as a restriction in accordance with section 24(8) of the Land Registration Act 2002, or any subsequent Act that replaces it. The wording of the restriction shall be:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without a certificate signed by the applicant for registration [or their conveyancer] that the provisions of this Order of the Tribunal dated 8th March 2021 have been complied with".

6. The Respondent shall immediately on the sale or transfer of any of its interests in the Property notify the Manager of the completion of the sale/transfer thereof and provide him with the name and contact details of the third party purchaser.
7. An order shall be made under section 20C Landlord and Tenant Act 1985 that the Respondent's costs before the Tribunal shall not be added to the service charges.

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondent or the Tribunal.
2. That no later than four weeks after the date of this order the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicants and the Respondent shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund).
3. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon 1st February 2021 become rights and liabilities of the Manager.
4. The Manager shall account forthwith to the Respondent for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.
5. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of Functions and Services attached.
6. By no later than 15th March 2022, the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the property up to that date, providing a copy to the lessees of the Property and the Respondent at the same time. This report shall include details of the apportionment of the management fees.
7. Within 28 days of the conclusion of the management order, the Manager shall prepare and submit a brief written report for the Tribunal, on the progress and outcome of the management of the property up to that date, to include final closing accounts. The Manager shall also serve copies of

the report and accounts on the lessor and lessees, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new tribunal-appointed manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.

8. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.
- (iii) The duty and power to take out in the manager's own name, in accordance with the terms of the leases, insurance policies in relation to the buildings and the contents of the common parts of the Premises with a reputable insurer and provide a copy of the cover note to all lessees and the Respondent on request
- (iv) The duty and power to manage or provide for the management, through a broker, of any claims brought under the insurance policies taken out in respect of the Property with the insurer(s).
- (v) The power to appoint professionally qualified persons (such as insurance brokers) as the manager may reasonably require to assist him in the performance of his functions.
- (vi) The power to appoint any agent to carry out any such function or obligation which the manager is unable to perform himself or which can be more conveniently done by an agent.
- (vii) The Respondent is prohibited from exercising any management functions (which includes placing the insurance) in respect of the Property where the same are the responsibilities of the Applicant under the Order.
- (viii) The Respondent and any agents thereof shall give reasonable assistance and cooperation to the Applicant in pursuance of his duties and powers under the Order and shall not interfere or attempt to interfere with the exercise of any of the said duties and powers.
- (ix) The Applicant has the power to receive payments arising from insurance claims and to apply them to the reinstatement of any loss to distribute such payments as appropriate to the beneficiaries of such claims.

Service charge

- (i) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (ii) Set Demand and collect ground rents, service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (iii) Set Demand and collect his own service charge payable by the Respondent (as if he were a lessee), in respect of any un-leased premises in the Property which are retained by the Respondent.
- (iv) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- (v) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- (i) Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the Manager.
- (ii) Maintain efficient records and books of account which are open for inspection by the lessor and lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.
- (iii) Maintain on trust an interest-bearing account/s at such bank or building society as the Manager shall from time to time decide, into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.
- (iv) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

- (i) Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.
- (ii) The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondent and the lessees.
- (iii) The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.

Fees

- (i) Fees for the abovementioned management services will be a basic fee of £35,000 plus VAT per annum for the Estate and Building. This fee is to be apportioned per flat at the same percentages as the service charge. A Schedule of the apportionment to be provided to the Tribunal by 26th March 2021. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS. Thereafter the fee shall be reviewed annually in line with inflation.
- (ii) Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a charge of 2% of the cost of the works plus VAT. In respect of any unusually large contract (such as external cladding contracts), the fee shall be a reasonable fee for the work involved and not exceed 2%.
- (iii) An additional charge for dealing with solicitors' enquiries on transfer will be made in the sum not to exceed £250 plus VAT payable by the outgoing Lessee.
- (iv) The undertaking of further tasks which fall outside those duties described above are to be charged separately at an hourly rate ranging as follows:
 - MH Maunder Taylor: £200 per hour plus VAT
 - Senior Property Manager: £175 per hour plus VAT
 - The time of employed Property Manager for additional responsibilities to be charged at £125 pre hour plus VAT.

Additional Powers for the Manager

- (i) The power to appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him the performance of his functions.
- (ii) The power in his own name to bring, defend or continue any legal action or other legal proceedings in connection with this Order. The Applicant shall be entitled to an indemnity for both his own costs reasonably incurred and for any adverse costs order out of the service charge account.
- (iii) The power to enter into or terminate any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of his functions.
- (iv) The power to open and operate client bank accounts in relation to the management of the Property and to invest monies pursuant to his appointment in any manner specified in the Service charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to s.42 of the Landlord and Tenant Act 1987.

- (v) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the Respondent or any Lessee owing sums of money under his Lease.
- (vi) The power to borrow all sums reasonably required by the Applicant for the performance of his functions and duties and the exercise of his powers under this Order in the event of there being any arrears, or other shortfalls of service charge contributions due from the Lessees or any sums due from the Respondent, such borrowing to be secured (if necessary) on the interests of the defaulting party (i.e. on the leasehold interest of any Lessee or the freehold/leasehold interests of the Respondent) PROVIDED THAT that Applicant shall not secure any borrowing as aforesaid without the consent of the defaulting party or in default of that consent, without further Order of the First-tier Tribunal.
- (vii) From the date of the Order, no other party shall be entitled to exercise a management function in respect of the Property where the same is a responsibility of the Applicant under the Order.
- (viii) From the date of the Order, the Respondent, whether by itself or any agent, servant or employee, shall not demand any further payments of service charges, administration charges such functions having been transferred to the Applicant.
- (ix) The Respondent and the Lessees and any agents or servants thereof shall not interfere or attempt to interfere with the exercise of any of his duties and powers
- (x) The right to treat the service charge financial year as commencing on 15th March 2021 and thereafter running from 15th March to 14th March in each year the Order is in place.
- (xi) The Applicant shall be entitled to an indemnity for his own costs reasonably incurred and for any adverse costs order out of the service charge account, and such costs and adverse costs shall be payable by the Respondent and/or the Lessees as a service charge according to the provisions of the Leases and the Order

Complaints procedure

- (i) The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.