



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

<b>Case Reference</b>	: CHI/29UL/LAM/2021/0011
<b>Property</b>	: 5 Wellington Terrace, The Esplanade, Sandgate, Folkestone CT20 3DY
<b>Applicant</b>	: David Cown
<b>Representative</b>	: Daniel Cown
<b>Respondent One</b>	: Napoleon Management (Sandgate) Limited
<b>Representative</b>	: Boys & Maughan Solicitors
<b>Respondent Two</b>	: Egan Property Management Limited
<b>Interested Persons</b>	: Leaseholders of Basement Flat 1, Flats 2, 3 and 5
<b>Type of Application</b>	: Appointment of manager section 24 of the Landlord and Tenant Act 1987
<b>Tribunal Member(s)</b>	: Judge Tildesley OBE Mr D Ashby FRICS Mr P Gammon MBE
<b>Date and Place of Hearing</b>	: 9 March 2022 Folkestone Magistrates Court
<b>Date of Decision</b>	: Decision given orally 9 March 2022 14 March 2022

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**DECISION**

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## **Background**

1. The Applicant seeks an appointment of manager in accordance with section 24 of the Landlord and Tenant Act 1987.
2. The Applicant also seeks an Order under section 20C of the Landlord and Tenant Act 1985 prohibiting the Landlord from recovering costs of these proceedings through the service charge.
3. The Applicant's grounds for the Application for the appointment of manager are as follows:
4. The management company and landlord is in breach of a number of statutory grounds:

The management company and landlord ("respondents") are in breach of their obligations under the lease specifically relating to keeping the building in a good substantial repair and condition, properly insured at all times and failure to undertake maintenance and repair obligations inter alia.

Demanding non-compliant unreasonable and unrecoverable service charges, failure to issue service charges correctly in accordance with S47 of the Landlord and Tenant Act 1987, S155 of the Commonhold and Leasehold Reform Act 2002. In addition, failure to maintain a service charge fund and proper accounting records such is already being determined by the tribunal under case reference CHI/29UL/LSC/2021/0067/AW.

The respondents have failed to comply with the code of management practice namely RICS Service charge residential management code (3rd Edition) as approved by the Secretary of State under the Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2016, Housing Urban Development Act 1993 Trustee Investment Act 1961 & Service Charge Contributions (Authorised Investment) Order 1988 as amended, inter alia

5. The Applicant served a section 22 Notice on 9 July 2020.
6. The Applicant, however, did not specify the name of an appointed manager.
7. On 16 November 2021 the Tribunal advised the Applicant that it could not progress the Application until a Manager was nominated.
8. On 29 November 2021 the Applicant responded as follows

“I have contacted in excess of 25 experienced management companies, including Your Move, JH Property, LH Property, Alexander Fleming, Martin and Co, Cobblestone Estates and even ones who have previously been appointed by the FTT such as Colmore Gaskell. Nearly all have stated they are happy to take the management only when confirmation of funding for the roof is in place and the building is put back to a good state of repair. There is a concern that due to the serious state of disrepair, it will be impossible for any appointed manager to perform its duties customary to a management order. Presently there isn't much to manage, other than collecting service charge and general accounting duties, until at the minimum, the roof is put back on and the property is structurally sound. Therefore, it seems logical to appoint a chartered surveyor firm with experience in managing development projects alongside an independent managing agent to manage the finances and who will then take on the day to day management duties. I have spoken with Mr Shane Last who works at Studio Charrette Planning & Architecture Practice, an experienced planning consultant, architect and building firm, who are willing to be non-appointed for the reinstatement of the roof from construction through to completion. I have also spoken with Dinesh Patel from Aeon Estates Ltd who is willing to handle the finances, service charges and to work alongside Studio Charette as a non appointed manager of the court and then continue as managing agents. I have provided their qualifications below. As it has proven difficult to get a manager willing to be directly appointed by the FTT, in reference to the case of *K. Telfer v Judeglen Limited and Latchguard Limited* [2003], I therefore recommend myself as the applicant to be appointed manager on the recommendation that Mr Shane Last at Studio Charrette Planning & Architecture Practice be appointed as project managers for the reinstatement of the roof and Dinesh Patel from Aeon Estates Limited as the managing agents. I understand the directions were for an independent party to be recommended and I feel in normal circumstances this would be possible, however this situation is far from normal. It is evident the current managing agents are incapable of managing this property and its finances, and the way the property is being run at this moment is clearly not working. The property is basically a building site due to the unnecessary total destruction of the roof caused by the respondents, yet nearly two years on, the respondents have not done anything to rectify this and seem to be dedicating their time and money in unproductive legal battle and recently obtaining planning to make the bin area more aesthetically pleasing to look at (Folkestone Planning ref 21/1414/FH), rather than this more important issue. Therefore a different pro-active approach is needed and hence my recommended arrangement observed above appears to be the most suitable alternative with an independent party to handle the finances and service charges, and an independent project manager to bring the property to a good state of repair which is in the benefit of all the lessees.

9. On 31 December 2021 the Tribunal drew the attention of the Applicant to the recent PRACTICE STATEMENT ON THE TRIBUNAL'S CONSIDERATION OF WHO TO APPOINT AS A MANAGER dated December 2021 issued by the Chamber President, Siobhan McGrath

10. The Tribunal identified paragraph 8 of the Practice Statement which states  

“Save in exceptional circumstances, the Tribunal will not usually appoint a leaseholder as the Manager”.
11. The Tribunal asked the Applicant to consider whether he still wished to proceed with the Application on the basis suggested in his response of 29 November 2021 or whether he wished to put forward a person who meets the Tribunal requirements in the Practice Statement.
12. The Tribunal directed the Applicant to provide a response by 17 January 2022. If no response was forthcoming the Application would be struck out.
13. The Applicant responded by the due date stating that *“After consideration of the directions and the practice statement, the Applicant still maintains and recommends the appointment of himself as the Tribunal Manager however using the resources of the firm EEUK Limited t/a Enviro Estates (“the Company)”*.
14. The Tribunal issued directions for exchanges of statements of case, and fixed the hearing for the 9 March 2022.
15. The Tribunal required the leaseholders to indicate whether they agreed or disagreed with the Application. The leaseholders of Flats 1, 2 and 3 disagreed with the Application. The leaseholder of Flat 5 agreed with the Application.
16. Respondent 2 supplied a witness statement and stated that it had resigned from its appointment as managing agent and would not be attending the hearing.
17. The Tribunal inspected the property immediately prior to the hearing. Judge Tildesley and Mr Ashby inspected the interior of the property including Flats 4 and 5. The Tribunal saw that a temporary tin roof had been installed which was protected by a form of plastic sheeting.
18. The property is a converted mid-terrace Victorian style house 5 storey building (Including the basement). The building consists of a total of 5 self contained flats. The building is located on the seafront.

## **Hearing**

19. At the hearing Mr Daniel Cown represented the Applicant who attended in person. Mr Barnaby Hope of Counsel represented the Respondent. Mr G Playfoot and Chin Yen Goh of Flat 2 and Mr and Mrs Newton of Flat 5 were in attendance.

20. After hearing from the parties the Tribunal announced its decision.

### **Decision**

21. The Tribunal decides that

- a) The Respondent had not complied with its obligations to repair the roof and that unreasonable service charges had been made. In this regard the Tribunal is satisfied that the threshold criteria of section 24(2)(a)(i) and section 24(2)(ab)(i) of the Landlord and Tenant Act 1987 have been met.
- b) It is just and convenient to make an order under section 24(1) of the Landlord and Tenant Act 1987 on the grounds of breakdown in the relationship between the parties, and the Respondent's delay in finding a solution to the roof.
- c) Mr David Cown is not a suitable person to be appointed as Manager of the Property. The Tribunal acknowledged that Mr Cown was a successful business person who had considerable skills as an enabler. The Tribunal, however, finds that Mr Cown did not fulfil the requirements expected of a manager as set out in paragraph 9 of the Practice Statement. The Tribunal also finds that Mr Cown's position as leaseholder would constitute a conflict of interest, and that there were no exceptional circumstances to justify departure from paragraph 8 of the Practice Statement.

22. The Tribunal gave the parties leave to submit by application names of prospective managers to be considered by the Tribunal for appointment. Any such application must be made by **4pm on 10 June 2022**. If no application is made by that date, a party would have to start the proceedings again if it wished a manager to be appointed.

23. The Tribunal made no order under section 20C of the Landlord and Tenant Act 1985. The Tribunal did not consider it just and equitable to make such an Order because the Applicant had not been successful with his Application, and that he had been advised beforehand that the Tribunal would only consider a leaseholder for appointment in exceptional circumstances.

24. The Tribunal thanked Mr Daniel Cown and Mr Barnaby Hope for the manner in which they presented their respective cases. The Tribunal explained that it would provide detailed reasons on request if a party was planning to apply for permission to Appeal.

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk).
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.