FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LVM/2022/0003**
HMCTS code)	**:**	**V: CVPREMOTE**
Property	**:**	**17 and 17A Manchester Street, London, W1U 4DJ**
Applicants	**:**	**Carol Ellis-Jones (Flat 1)** **Sarah Buckley (Flat 2)** **Roger and Sylvia Storey (Flat 3)** **Mohammed, Adnan and Tariq Chida (Flat 4)** **Shantial and Chandabaia Shah (Flat 5)**
Representative	**:**	**Adrian Carr (Counsel)**
Respondent	**:**	**Jamil Ahmud**
Representative	**:**	**Aaron Walder (Counsel)**
Type of application	**:**	**Variation of Order for appointment of manager**
Tribunal members	**:**	**Judge Robert Latham** **Christopher Gowman MRICS**
Date and Venue of Hearing	**:**	**28 April 2022 at** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**30 May 2022**

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 no-one requested the same.

The Tribunal had regard to the following documents:

(i) Applicant's Bundle (388 pages), reference to which will be prefixed by "A1.__");

(ii) Applicant's Reply Bundle (114 pages), reference to which will be prefixed by "A2.__");

(iii) Respondent's Bundle (461 pages), reference to which will be prefixed by "R.__");

Decisions of the Tribunal

(1) The Tribunal extends the current Management Order which was made on 21 January 2019 until 30 June 2025 (which is the end of the existing service charge year) on the terms of the existing order.

(2) The Tribunal does not attach a penal notice to the Management Order.

(3) If the Applicants still seek any other variation to the existing order, they may apply to the Tribunal for further Directions.

(4) The Tribunal determines that the Respondent shall pay the Applicants £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. On 21 January 2019, a tribunal (Judge Hargreaves and Peter Roberts) appointed Mrs Alison Mooney to manage the property at 17 and 17A Manchester Street, London, W1U 4DJ ("the Property") pursuant to Part II of the Landlord and Tenant Act 1987 ("the Act"). The Order was made for the period of three years from 21 January 2019 (at A.17-24). The Order was made by consent (A.15-16).

2. In January 2022, the Applicant applied for the Management Order to be varied: (i) to extend the Current Order for a further period of 3 years; and (ii) to provide that: (a) a Penal Notice be attached to the new

order; and (b) the Respondent's powers to grant consents be transferred to the tribunal appointed manager.

The Applicants consider that that Mrs Mooney's appointment has been a success. However, they have concerns about the management of the property being returned to the Respondent. An extension is sought to ensure the continued good management of the Property.

3. On 19 January 2022, Ms Bowers, a Procedural Judge, gave Directions. She also made an interim order to extend the appointment of Mrs Mooney until this application has been finally determined. The Applicants had indicated that they would be content for the application to be determined on the basis of written representations. However, Ms Bowers considered that an oral hearing was appropriate, with Mrs Mooney in attendance. She set the matter down for a virtual hearing with a time estimate of three hours.

4. Pursuant to the Directions:

(i) The Applicants filed their Bundle of Documents in support of their application (388 pages). This includes a Statement of Case (at A1.2-10), a Report from Mrs Mooney (A1.11-14), and a witness statement from Mr Roger Storey, the leaseholder of Flat 3 (A1.39-46).

(ii) The Respondent filed his Bundle of Documents opposing the application (388 pages). This includes witness statements from Mr Jamil Ahmud, the Respondent landlord (at R.6-36), Mr Imran Ahmad, and Mr Andy Ho (at R.457-458). Mr Ahmud is the Senior Partner of Bloomsbury Law Solicitors ("Bloomsbury Law) who occupy the commercial premises at 17 Manchester Street, which is on the ground floor and the lower ground floor of the Property. Mr Ahmad and Mr Ho are both Solicitors with Bloomsbury Law. Mr Ahmud described the evidence filed by the Applicants and Mrs Mooney as "disingenuous and misleading in order to continue to retain the management of the Property".

(iii) The Applicants have filed a Bundle of Documents in Reply (114 pages). The Directions made provision for "a brief reply to the issues raised in the Respondent's statement and supporting documentation". The Bundle includes a witness statement from Mrs Mooney (p.2-46), a second witness statement from Mr Storey (p.47-60), and a witness statement from Mr Tariq Chida, the leaseholder of Flat 4 (p.61-114).

5. The Manager has provided a report to the Tribunal, dated 10 March 2022 (at A1.11). She states that she has been able to achieve a considerable amount, particularly against the background of Covid. The Building is now fully refurbished and there is now little more to do than the normal day to day management functions. Whilst the leaseholders

have worked with her to restore the Building to a good condition, she has not had the same cooperation from the landlord. She states that Mr Ahmud has taken every opportunity to frustrate both her as manager, and the interest of the leaseholders. Neither the leaseholders, nor the manager, has any confidence that the Respondent has learnt from the lessons that led to her appointment as Manager. They have no confidence that "the leopard has changed his spots". The Applicants also complain that the Respondent has failed to carry out his responsibilities as landlord without the threat of legal action. They therefore ask for a penal notice to be attached to the Management Order.

6. Mrs Mooney complains that:

> "There is a pattern of behaviour that has emerged over the period of management which is that Mr Ahmud will prevaricate, block, and generally behave in the most vexatious possible manner, until such time as it becomes clear that legal action will be taken whereupon he tends to step back, leaving the leaseholders to pick up the inevitable costs and suffer the inconvenience."

These are serious allegations to be made against the Respondent who is a Solicitor and Senior Partner of Bloomsbury Law. One of their specialisms is residential property law.

7. In his statement in response, Mr Ahmud opposes the extension of the Management Order. He states that he is now semi-retired and is better placed to manage the Building. He asserts that whilst the residential parts of the Building have now been put in a proper state of repair, there are still outstanding works to the commercial parts. He states that he is still owed outstanding service charges of £14,398.75 which arose prior to August 2014. He suggests that the Manager failed to act when Flat 4 was used as a brothel. He states that the Manager has failed to cooperate with him:

> "On most occasions, the Respondent has been met with hysterical and accusatorial correspondence from the Manager. She has attempted to inflame situations rather than resolve them and whenever an issue has arisen, it has been resolved swiftly when the Manager has not been involved."

The Hearing

8. The Applicants were represented by Mr Adrian Carr (Counsel) who was accompanied by Mr Vidler from his instructing solicitor, Teacher Stern LLP ("Teacher Stern"). He adduced evidence from Mr Storey, Mr Chida from Mrs Mooney. Ms Sherjar Chida also attended the hearing.

9. The Respondent was represented by Mr Aaron Walder (Counsel) instructed by Bloomsbury Law. He adduced evidence from Mr Ahmud and Mr Ahmad.

10. Both Counsel provided Skeleton Arguments. They cross-examined the witness at length. This did not bring out the best of some of the witnesses. The hearing started at 10.00 and concluded at 17.10 with a shortened (45 minute) lunch break.

11. At the beginning of the hearing, Mr Carr confirmed that the Applicants are now longer proceeding with their allegation that the Respondent had refused his consent for Mr Chida to carry out improvements to his flat. It would seem that the relevant letter seeking consent had not been sent to the Respondent.

12. None of the applicants live in their flats. Flat 3 is occupied by Mr Storey's niece. Ms Buckley (Flat 2) is in residential care. Mr and Mrs Shah (Flat 5) are not based in the UK. They have not always paid their service charges on time. The Tribunal is satisfied that all five Applicants support the application and that they have all contributed towards the costs of making this application.

The Witnesses

Mr Roger Storey (Flat 3)

13. Mr Storey has made two witness statements dated 10 March 2022 (at A1.39) and 19 April 2022 (at A2.47). He has taken the lead on behalf of the Applicants. He considers that Mrs Mooney's appointment has been a considerable success, following many years of inaction on the part of the Respondent. Over the past three years, Mrs Mooney has carried out all the major works required by the Section 22 Notice, having throughout consulted in detail with the leaseholders. Accordingly, the leaseholders unanimously consider that it would be in interests in the continued good management of the Property and the leaseholders for the appointment to continue.

14. Mr Storey states that one of the Respondent's main problems appears to be engaging with the Applicants. He notes that Mrs Mooney has faced similar difficulties. The Respondent tends to ignore important correspondence. When he does selectively engage, it is rarely in a constructive manner as he frequently adopts an aggressive and defensive approach. That trend has continued notwithstanding the appointment of Ms Mooney. Accordingly, the Applicants have no confidence that the Respondent is able or willing to assume any responsibilities whatsoever when it comes to the future management of the Building.

15. In his second witness statement, he responds to the issues raised by Mr Ahmud in his statement. Mr Ahmud describes his evidence as "misleading and disingenuous". He questions whether Mr Storey is speaking on behalf of the other applicants. We found Mr Storey to be a measured and careful witness. He described the problems that he faced when his gas supply was disconnected. He accepted that he had been abroad for a significant period and had not pushed for repairs to be undertaken. We have no hesitation in accepting his evidence.

Mr Tariq Chida (Flat 4)

16. Mr Chida is the joint leaseholder of the flat with his two brothers, Mohammed and Adnan. In his first witness statement, dated 11 December 2018 (at A1.54), he describes the circumstances which led to the initial application for the appointment of a manager. In his second statement, sated 19 April 2022 (at A2.65), he describes the difficulties that he faced in obtaining management packs from the Respondent which led to aborted sales.

17. He also addressed the allegation raised by the Respondent that he had permitted his flat to be used as a brothel. He stated that he had obtained a premium rent of £5,200 when he let the flat to a Saudi Corporate client in November 2018. The letting was arranged by agents. The Assured Shorthold Tenancy Agreement is at A2.88. The tenant was required to use the flat as a private residence for the tenant and his immediate family. There was a clause not to use the flat for any illegal or immoral purposes. Mr Chida stated that the tenant was not satisfactory and rent arrears accrued. As soon as he heard that the flat weas being used for immoral purposes, he reported it to the police and persuaded the tenant to vacate. We accept his evidence.

18. In a letter dated 23 March 2020, Bloomsbury Law suggest that Mr Chida was being "economical with the truth" and was complicit in his flat being used by prostitutes. The Tribunal rejects this suggestion.

Mrs Alison Mooney (the Manager):

19. Mrs Mooney has provided a Report to the Tribunal, dated 10 March 2022 (at A1.11) and a witness statement, dated 19 April 2022 (at A2.2) which responds to the witness statement filed by the Respondent. Mr Ahmud describes her report as "a self-serving and disingenuous". He considers Mrs Mooney to be unprofessional. She has sought to gain favour with the leaseholders by taunting him. He accuses her of having descended into the arena, rather than remain neutral and professional. On 14 June 2019 (at R.90), Bloomsbury Law took the decision to block her emails having received thee emails which they described as "entirely pointless", unnecessary" and an embarrassment to herself.

20. Mrs Mooney is an experienced manager who has managed a number of properties as a Tribunal appointed manager. Any such manager is appointed to oversee a scheme of management and acts independently of the parties as an officer of the tribunal. Mrs Mooney has clearly found it difficult to relate to Mr Ahmud. She has never met him. When asked why not, her response was "No thank you". She described Mr Ahmud as "misogynistic and unpleasant". In her statement, she describes the Respondent's correspondence as "repeatedly rude, disrespectful and unnecessarily aggressive".

21. The Tribunal is satisfied that the Management Order has been successful in that the Building has now been put in a proper state of repair. Whilst there are some outstanding items relating to the commercial elements of the building, these have now been put in hand.

22. Mrs Mooney was subjected to sustained cross-examination. She accepted that it was important to foster good relations with both landlord and tenants. She stated that this had not been possible with Mr Ahmud. She described how Mr Ahmud had patronised her. She suggested that he had been the architect of his own misfortunes. She denied that she was personally involved in the case. It was suggested that she was under a retainer to Teacher Stern who have a mission to act for tenants through these applications for tribunal appointed managers. She denied this. We accept this.

23. On 21 January 2019, the Management Order was made by consent. We were told that the Respondent had agreed this only at the eleventh hour after having ignored the initial Section 22 Notice. The Tribunal heard evidence from Mrs Mooney before satisfying themselves that Mrs Mooney was an appropriate appointment. In retrospect, we suspect that neither the tribunal nor Mrs Mooney recognised the difficulties that this appointment would present.

24. Mrs Mooney has found it difficult to relate to Mr Ahmud. In these difficult circumstances, it has been the more important for her to demonstrate her impartiality and to seek to lower the tone of any correspondence. We regret that she has not always done so. It was not for Mrs Mooney to work with the leaseholders for an extension of the Management Order or to approach potential witnesses (see email of 15 January 2022 at A1.320). On 27 August 2021 (at A1.360), it was wrong for Teacher Stern to assert that they were acting for Mrs Mooney; they were acting for the tenants. Mr Walder criticised her for involving herself in an application by Mr Chida for retrospective consent for works that he had executed. This was rather a matter between the leaseholder and the Respondent. Mrs Mooney has not always copied Mr Ahmud into correspondence as required by the Management Order. Some of the emails did not reflect the degree of detachment that we would have expected from a Tribunal appointed Manager (for example the two emails dated 13 June 2019 at R.91).

Mr Jamil Ahmud (the Respondent landlord)

25. Mr Ahmud's witness statement, dated 31 March 2022, is a comprehensive rebuttal of the evidence given by Mr Storey, Mr Chida and Mrs Mooney. He does not accept any responsibility for the management failures that led to the making of the Management Order made in January 2019. He suggests that there were no credible complaints of lack of day-to-day management. He is now semi-retired and is able to dedicate more time to the Building. However, he makes no proposals as to how the Building would be managed. He has no confidence in Mrs Mooney continuing to manage the Building. However, he has made no attempt to identify a more suitable manager. It would have been open to him to establish a dialogue with his leaseholders to appoint a managing agent that would be acceptable to both landlord and tenant. He has taken no steps to do so.

26. Mr Ahmud was questioned about the aggressive tone adopted in a letter dated 17 September 2021 (at A1.369). Mr Ahmud described how he was "responding robustly". When Counsel suggested that the tone was extraordinary, Mr Ahmud's response was that he should be reported to the S.R.A.

Mr Imran Ahmad:

27. Mr Ahmad has provided a short statement, dated 28 March 2022 (at R.452). He is a solicitor with Bloomsbury Law. Mr Ahmud asked him to deal with a number of issues relating to the major works. He adopts the language of Mr Ahmud in describing Mrs Mooney's emails as "extremely rude and aggressive". He suggests that she was "maliciously attempting to cause panic" in the manner in which she dealt with the gas leaks. He denies Mr Chida's evidence that he lost a sale because of Mr Ahmud's failure to provide a management pack. He states that he was told by the solicitor that the buyers had pulled out because the asking price was too high.

28. Mr Ahmad suggested that Mr Chida was unprofessional and aggressive. He describes an incident in October 2019 outside the Building. He was able to recall precisely the words used albeit that the incident had occurred some 2.5 years previously and he had not made any attendance note. He stated that Mr Chida had told him to "fuck off". When he objected to this language, Mr Chida came uncomfortably close to him and threatened him He added that "as I was at work, I decided against responding to his attempt at intimidation". Under cross-examination, he described Mr Chida as having "greasy hair and an unkempt beard". He added that he was "disgusting" and "cowardly". In response to a question from the Tribunal as to what he would have done had he not been at work, he replied that he would have responded: "If you want to take it further, I will take you round the corner". He added, "If someone wants to attack me, they will be met

with resistance". The Tribunal was somewhat surprised by these responses.

The Law

29. An application to extend the appointment of a manager takes effect as a variation of the Current Order. Section 24(9) of the 1987 Act provides: The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section …

30. The Court of Appeal considered the Tribunal's discretion afforded by section 24(9) in *Orchard Court Residents' Association v St Anthony's Homes Ltd* [2003] 2 EGLR 28, where the Tribunal had extended a management order and the landlord had appealed that decision. Keane LJ stated:

> [11] It is to be noted that the legislature has not thought it fit to embody in section 24(9) the various criteria set out in section 24(2). There is a clear contrast between the requirements when an order is made and when an order is varied. It seems to me that the section is drawing a distinction between making an order and varying an order. Although it might perhaps be said that, in some circumstances, the court is always making an order when it varies an existing order, that cannot be the correct interpretation in the context of this statutory provision.
>
> [12] There are no explicit criteria in section 24(9) in contrast to section 24(2). Moreover, if an application is made by a relevant person (such as a landlord) to vary or discharge an existing order, the legislature has expressly required the tribunal to be satisfied of certain matters: see section 24(9A). The inclusion of those express requirements in subsection (9A) and the omission of anything of that sort in subsection (9) itself has to be seen as deliberate, and it confirms the contrast between section 24(2) and section 24(9).
>
> [13] Sections 24(2) and 24(9) deal with quite different situations. Section 24(2) is concerned with making an order where one does not exist, whereas section 24(9) is dealing with an order that is already in existence because the tribunal has already been satisfied that the tests in section 24(2) have been met. [14] I quite accept that, in exercising its discretion under section 24(9), a tribunal must have regard to relevant considerations: that is trite law …. But when one looks at paras 20 and 21 of the tribunal's decision, it is quite clear that this tribunal did have such regard. However, section 24(2) did not require it to be satisfied that at least one of those thresholds had been passed. Nor can I see any reason why this particular type of variation, the extension of a manager's term, should have to meet the criteria in section 24(2). Mr Heather has conceded that there is no limit on the length of time for which a manager may be appointed in the first place. In those

circumstances, why should one require the section 24(2) tests to be met all over again."

31. We remind ourselves that Part II of the 1987 Act is a "problem solving jurisdiction" (see *Chuan-Hui v K Group Holdings Inc* [2021] EWCA Civ 403; [2021] 1 WLR 5981 per Henderson LJ at [29]). In *Kol v Bowring* [2015] UKUT 530 (LC), HHJ Gerald noted at [22] that the purpose of appointing a manager is to:

"…enable that property to be managed subject to the control of the tribunal in circumstances where the landlords' management or discharge of its obligations under the provisions of the lease have been found wanting. Looking at matters very broadly, the whole purpose of the jurisdiction is to enable the F-tT to ensure that what has hitherto been done inadequately and perhaps improperly is done adequately and properly".

32. In *Coates v Marathon Estates Limited* [2018] UKUT 31 (LC), the Deputy Chamber President, Martin Rodger QC, confirmed that it is open to this tribunal to endorse a Management Order with a penal notice. The Judge noted that the power in section 24(4) of the 1987 Act is wide enough and that it would be "entirely fitting" to add a penal notice if the tribunal thinks that an application to the County Court under section 176C of the Commonhold and Leasehold Reform Act 2002 may be required to secure compliance with its order.

The Background

33. The Property is a mid-terrace period building in Marylebone comprising commercial premises on the lower ground and ground floor and five residential flats on the first, second and third floors ("the Building"). The upper floors of the Building (No. 17A) are self-contained, with their own entrance at ground floor level. They contain five residential flats, all of which are owned by the Applicants. The remainder of the ground floor and the lower ground floor of the Building (No. 17) is self-contained with its own entrance and is used for commercial/office use by Bloomsbury Law.

34. The application concerns 17A being the first to third floors comprising the flats and the door to the street and entrance hall at ground floor and all common parts thereof and all structure (both internal and external), including the roof and all common facilities. The Applicants are the lessees of the five residential flats in the Building: (i) Flat 1: Carolynne Ellis-Jones; (ii) Flat 2: Sarah Buckley; (iii) Flat 3: Roger Storey and Sylvia Storey; (iv) Flat 4: Mohammed Chida, Adnan Chida and Tariq Chida; and (v) Flat 5: Shantilal Shah and Chandanbala Shah

35. Each of the residential flats is subject to a lease commencing on 2 October 2014 expiring on 26 September 2161. Each lease is dated 2 October 2014 and they are all in the same or very similar terms. The leases were all granted pursuant to Chapter II of the Leasehold Reform Housing and Urban Development Act 1993. The "competent landlord" who granted the leases was the Portman Estates Nominees (One) Limited and the Portman Estates Nominees (Two) Limited, which companies own the freehold of the Building ("Freeholder").

36. On 15 November 2013 the Respondent was registered at the Land Registry as the proprietor of a the headlease of the Building under title number NGL737746. The leases held by the leaseholders are noted on the title of the headlease. The Respondent is the immediate landlord of the leaseholders and the person who is bound by the landlord covenants of their leases, so that the Respondent is the "landlord" of the leases within the meaning of section 60(1) of the 1987 Act.

37. On 12 November 2018, the Applicants applied to the Tribunal for the appointment of Mrs Mooney as Manager pursuant to Part II of the 1987 Act. On 21 January 2019 (at A1.17), the Tribunal made the current Management Order by consent, appointing Mrs Mooney as Manager of the residential Parts of the Building. The Order recites that it was made on the basis that:

(a) the Respondent was in breach of obligations owed by him to the Applicants under the Flat Leases and relating to the management of the Building or any part of thereof;

(b) the Respondent had failed to comply with relevant provisions of the RICS Code;

(c) in each of the above cases it is just and convenient to make the order below in all the circumstances of the case; and

(d) that other circumstances exist which make it just and convenient for the order to be made.

38. Mr Tariq Chida sets out the he problems that led to the application for a management order at [24] of his witness statement, dated 11 December 2018 (at A1.54):

(i) Accounting: there had been no estimate of service charge provided for the years commencing October 2015, October 2016, October 2017 or October 2018. The Applicant' solicitors still held funds pursuant to an undertaking, dated 2 October 2014 (at R1.55). There had been no reconciliation of the service charge for the years ending September 2014 and September 2015 and no explanation of what has been done with service charge monies and which are subject to the statutory trust.

(ii) The Respondent had failed to repair a broken lift and broken phone in the lift. The Respondent had been extremely aggressive when this had been raised by Ms Shah who had a young baby at the time.

(iii) The Respondent had issued budgets for the service charge on 8 August 2014 and 19 December 2014 which included charges for "gas maintenance" despite there being no gas supply to the common parts of the Building and for "legal fees" which were not due under the terms of the Applicants' leases;

(iv) In about January 2015, there had been a serious roof leak. The Respondent had failed to repair the damage which had been caused to the common parts.

(v) In October 2015, there had been a further roof leak. Mr Storey had contacted the Respondent about this and had exchanged emails over a period of five months. The Respondent had failed to resolve the problem.

(v) At the end of 2015, there had been a serious vermin infestation. The Respondent had refused access to the commercial part of No. 17, from where the infestation was believed to emanate, until complaints were made to the Local Authority.

(vi) From September 2016, there had been repeated issues with the Fire Alarm System which the Respondent had failed to resolve.

39. Mr Carr, on behalf of the Applicants, contends that despite the making of the Management Order, the Respondent's conduct continues to mean that the appointment of a manager is necessary for the proper and efficient management of the residential parts of the Building. He raises five issues in support of this contention:

(i) The Respondent's refusal to release an undertaking given in 2014 without any or any proper grounds;

(ii) The Respondent's failure to allow access to the commercial parts of the Building to investigate a gas leak;

(iii) The Respondent's s removal of the key safe installed by the Manager;

(iv) The Respondent's failure or refusal to provide information to enable the leaseholders to sell their flats; and

(v) The Respondent's attitude towards the leaseholders and the Manager.

(i) The refusal to release the 2014 Undertaking

40. In October 2014, the Applicants extended their leases with the Freeholder. On 8 August 2014 (at R.43), the Respondent had made a demand for service charges. Without making any admissions as to the validity of the Respondent's service charge demands, in order to ensure that the lease extensions completed, Teacher Stern gave an undertaking (at R1.55) to the Respondent to hold £29,483.72, representing the balance of the Respondent's purported service charge demand, less the aggregate sum to complete the five leases, pending determination of the liability of the leaseholders to pay all or some of the sum demanded.

41. It was not until 23 April 2019 (at A1.291) that the Respondent agreed to release Teacher Stern from their undertaking. In the interim, there had been extensive correspondence. The correspondence starts on 13 June 2018 (at A1.244). On 9 April 2019, Teacher Stern has sent a pre-action letter (at A1.177) together with draft Particulars of Claim (at A1.280).

42. The Respondent asserts that he was entitled to withhold the sums because there were arrears of service charges. However, the Respondent took no steps to seek a determination that the sums were payable or reasonable. The Applicants contend that they were not payable because they were not demanded in accordance with the terms of the lease and the demands were not accompanied by the requisite summary of rights and obligations. Even were these procedural errors to be corrected, the sums would not be payable by virtue of section 20B of the Landlord and Tenant Act 1985. The Respondent still contends that service charge of £14,398.75 are payable. Mr Carr contends that this demonstrates his fundamental misunderstanding of his obligations as landlord. The Tribunal agrees.

(ii) Access to remedy the gas leaks

43. There have been two gas leaks:

(i) In August 2019, there was a gas leak in the supply to Flat 3 (Mr and Mrs Storey). The Respondent forwarded them a "Gas Safety Warning". The gas was capped off. It was not reconnected until August 2021. In the interim, Mr Storey had to have an electric shower installed for use by his niece who was occupying the flat, as there was no heating or hot water.

(ii) In July 2021, the issue arose again with Flat 1 (Ms Jones). Contractors working for the Manager smelt gas. The supply was again capped off until the leak was remedied. Ms Jones' sub-tenant refused to pay her rent because the flat had no heating or hot water. Ms Jones had to provide alternative electrical facilities and accept a reduction in rent.

44. The problem arose because the gas meters are in a vault beneath the pavement. Albeit that two of the three vaults are common parts, it is believed that the gas pipes pass through the right hand vault which is in the possession of the Respondent and is used by Bloomsbury Law to store files.

45. Mr Storey accepts that he was slow in resolving the problem because he went on an extended trip. His contractor had failed to remedy the problem before Mr Storey went abroad. Apparently, his contractor had some altercation with Mr Ahmud. On 14 January 2020 (at A1.189), Mr Storey emailed Mr Ahmud seeking access for a different contractor to access the third vault to try and track the route of the piping. Mr Ahmud did not respond.

46. In August 2021, Ms Mooney sought to resolve the gas supply for Flat 1. On 6 August (at A1.354), she wrote to Mr Ahmud complaining that access had been refused to a contractor who had sought to investigate the leak. Mr Ahmud (at A1.355) responded refusing access unless various conditions were met. He described her email as "hysterical". Rather than address the points that Mr Ahmud had raised, Mrs Mooney responded in these terms: (at A1.357): "I trust that you will cooperate with British Gas and look forward to this matter being resolved once and for all". No further correspondence from you making unsubstantiated or foolish remarks will be entertained or responded to". Mr Ahmud's response (at A1.358) started: "Regretfully the hysterical nature of your correspondence continues". He threatened to report the matter to this tribunal. On 27 August (at A1.360-365) Teacher Stern wrote and extensive letter on behalf of Mrs Mooney.

47. A photograph at R220 shows the gas meters. They are mounted on a wooden board. The two leaks were eventually remedied when the mounting board was removed and access could be obtained to the rear of the meters. However, the Applicants state that the works were delayed as the Respondent refused to have the gas supply disconnected during normal working hours.

48. The Tribunal is concerned by the attitude adopted by Mr Ahmud. First, he suggested that any health concern could be addressed by capping off the supply. He described the gas leaks as being "small". He did not recognise any urgency in reconnecting the supplies. Secondly, he questioned why Mrs Mooney had become involved in the matter which should have been resolved by the two leaseholders. We are satisfied that any manager would have a legitimate role in addressing any health and safety issue. This is a situation where any landlord should have cooperated with the leaseholders to resolve the problems that had arisen.

(iii) The key safe

49. The dispute over the key safes illustrates the extent to which the relationship between the parties has deteriorated. Mrs Mooney arranged for a key safe to be installed adjacent to the front door (see the photograph at R.288). Mr Ahmud removed this. Mrs Mooney installed a second safe. This was removed. Mrs Mooney then had to incur the cost of installing a third safe. The purpose of installing the safes was so that contractors could have access to carry out the works necessary to put the building in repair.

50. Mrs Munro's position was that Clause 11(v) of the Management Order permitted her to install the safe. Mr Ahmud's position was that this was a trespass and that the safes could only be installed with his consent. That consent was not sought.

51. This dispute generated a mass of correspondence (at A1.324-345). On 20 September 2019 (at A1.324), Bloomsbury Law wrote to Mrs Mooney complaining about the installation of the safe. On 18 October (at A1.329), Teacher Stern became involved. On 1 November 2019, Bloomsbury Law (Mr Ho) complained that the safe was not only being used by builders, but also by other occupants. This included complaints that Mr Chida was letting Flat 4 being used as a brothel.

52. The Tribunal considers the key safe to be a minor issue. The Tribunal is surprised that Mrs Mooney did not seek consent from Mr Ahmud before installing the key safe. Had such consent been sought, the Tribunal would have expected Mr Ahmud to grant it. All parties had a common interest in ensuring that the builders had access so that the Building could be put in a proper state of repair, but that the keys should not be available to third parties.

(iv) The Seller's Packs

53. In their Statement of Case, the Applicants complain that the Respondent had refused to grant retrospective consent for alterations that Mr Chida had carried out to Flat 4. It is now agreed that whilst consent had been sought, and granted by the freeholder, no such consent had been sought from the Respondent.

54. Mr Chida currently has his flat on the market at an asking price of £1.65m. He has had two offers. His concern is that he is always on the back foot as he is not sure whether he will be able to obtain a management pack from the Respondent. Mr Storey is also planning to carry out alterations to his flat.

55. Mr Chida described two occasions when sales aborted because of the Respondents' failure to produce a management pack:

(i) 2016: His conveyancing solicitor sought to obtain a management pack over a period of five months. The buyers then withdrew.

(ii) 2017: On 27 September, Teacher Stern requested a management pack. On 14 November 2017, despite a series of chasers, this had still not been provided (see A2.71). On 23 November (at A2.82), Foxtons confirmed that the buyer had withdrawn, having waited two months for the management pack.

56. Mr Ahmad suggested that the 2017 buyer had withdrawn because the price was too high. We do not accept this. The Respondent suggested that no willing purchaser would withdraw merely because of the failure to provide a management pack. Again, we do not accept this.

(v) The Respondent's attitude

57. In his Skeleton Argument, Mr Carr argues that the Respondent's attitude towards both the Manager and the leaseholders is illustrated by the extensive correspondence which is before the Tribunal. The Respondent contrives to be both defensive and offensive in equal measure. The moment anyone criticises Mr Ahmud or asks him to deal with something, he reacts by referring the matter to a colleague at Bloomsbury Law, rather than dealing with matters in a simple and straightforward manner himself. His firm then engages in needless correspondence with the other parties, increasing costs and further damaging the already fragile relationships between the parties.

58. Mr Carr notes that the Respondent has not expressed any remorse for his previous failures of management, nor has he explained how he intends to manage the Building if the management reverts to him. He concludes that the consequences of management of the building reverting to the Respondent would be catastrophic for the leaseholders.

59. Mr Walder responds that the Respondent has provided clear, reasonable and detailed explanations for his conduct. The matters about which the leaseholders complain are minor. Even taken at their highest, they do not justify any extension to the Management Order.

The Tribunal's Determination

60. The tribunal only appoints a manager as a last resort when it is apparent that this is just and convenient to ensure that a property is properly managed. The manager is appointed to oversee a scheme of management and acts independently of the parties and as an officer of the tribunal. A Tribunal appointed manager is a neutral appointed party. It is important that they should engage with both landlord and the tenants. In exercising our discretion as to whether to grant an extension, we are satisfied that we should consider whether it is just

and convenient to do so. We are mindful of the fact that we are depriving the landlord of his right to maintain his own building.

61. In his closing submissions, Mr Walder argued that any Management Order must be for a limited period. The Building had now been put into a proper state of repair. The Management Order could not be extended indefinitely. In any event, Mrs Mooney was not an appropriate person to be the Manager. He referred to her "moral righteousness". He suggested that she had wrongly involved herself in (i) the application for consent; (ii) the gas leaks which was rather a matter for the individual leaseholders; and (iii) the litigation, by approaching witnesses. She had stepped "into the arena" to an unacceptable extent. Her dislike of Mr Ahmud was only too apparent. He stressed that the independence of a Manager is paramount. He suggested that Mrs Mooney would not be able to work with Mr Ahmud and any extension would will further polarise the relationship between landlord and tenant.

62. Mr Carr responded in equally strident terms. He repeated that "a leopard does not change his spots". The Respondent had not accepted any responsibility for the past management failures. He had no positive proposals for the future management of the Building. He accepted that Mrs Mooney had found it difficult to work with Mr Ahmud and that she may have taken actions when things could have been handled differently. However, at all times she has acted in the best interest of managing the Building.

63. The Tribunal is satisfied that we should extend the Management Order for a further period of three years. We make this order as we are satisfied that this is necessary to ensure that the Building is properly managed. We extend the order until 30 June 2025 which we understand is the end of the service charge year.

64. We found Mr Storey and Mr Chida to be honest and truthful witnesses. We accept that they are speaking on behalf of all the leaseholders in asserting that they have no confidence that the Building will be properly managed unless the Management Order is continued. There have been a catalogue of management failures which led to the making of the Management Order (see [40] above). There is no evidence that the approach adopted by the Respondent has improved over the three year period that the Management Order has been in pace. Rather, it seems to have become more confrontational. The Respondent has not accepted any responsibility for the past failings that led to the making of the Management Order. Neither has he come up with any proposals for the future management of the Building.

65. The parties must recognise that this is likely to be the last time that the Management Order is extended. It cannot be extended indefinitely. The Tribunal is satisfied that Mrs Mooney will ensure that the Building

continues to be properly managed over the next three years. However, the desired outcome of all the parties should be to work together to identify an agreed solution for the future management of the Building. There is nothing to stop the parties from seeking managing agents who would be acceptable to all parties. If such agreement is reached, there is no reason why this Management Order should run for the full period of three years.

66. There are lessons to be learnt by all parties, particularly the Mr Ahmud and Mrs Mooney. Both must look to the future. They must identify ways of working together, rather than in conflict. Both parties will be aware of the mediation services which could be made available. Both parties must learn to be less defensive. Mr Ahmud must demonstrate that he understands his obligations as landlord under both the terms of the lease and statute. He needs to consider how he frames his responses to correspondence from his tenants and the Tribunal appointed Manager. He should address the points that they raise, rather than seek confrontation. Some of his language, such of the use of the word "hysterical" is unacceptable. Mrs Mooney must not only seek to be independent of the parties; she must be manifestly seen to be independent.

67. This Tribunal is not willing to add a penal notice to the Management Order at this stage. The Tribunal is satisfied that a penal notice should only be added as a last resort if this is required to secure compliance with any specific part of the Management Order. The parties should come back to this tribunal, before embarking upon any proceedings for contempt in the County Court.

Varying the Terms of the Existing Order

68. Mr Carr applies for the Order to be varies to provide for the Respondent's powers to grant consents to be transferred to the Manager. The Tribunal is sympathetic to this application given the past problems that have arisen in connection with the management of the Building. However, the Tribunal only heard limited submissions on the scope of any such variations or on the terms of the draft Management Order submitted by the Applicants.

69. Paragraph 14 of the draft order grants the Manager the responsibility for "carrying out those functions in the residential Leases concerning approvals and permissions, including those for sublettings, assignments, alterations and improvements, that the Leases provide should be carried out by the Landlord." To grant consents for sublettings and assignments is one thing. To grant the Manager responsibility for consents for alterations and improvements is to give her a role that is much wider than that of any managing agent. It also impacts upon the property interests of the Freeholder. At the hearing, we were given to understand that Freeholder's consent would also be

required in certain circumstances. However, we heard no submissions on the terms of the lease or how this variation would impact upon the Freeholder.

70. We also note that some changes have been included which are likely to be controversial, but which were not raised in argument. For example, we note that in paragraph 5(h) includes the power to "erect upon the Property a key safe".

71. The Tribunal therefore directs the Applicants to consider whether they wish to pursue any variation to the terms of the existing order. It is always open to them to do so at a later stage if any problems arise. If the Applicants wish to proceed with any variation at this stage, the Tribunal invites Counsel to discuss what further Directions are required for the resolution of this issue. Could this be determined on the basis of written submissions? If the Applicants wish to pursue any application to vary the terms of the existing order, they must notify the Tribunal by no later than 16.00 on 10 June and provide draft Directions for the determination of the same.

Application under s.20C and refund of fees

72. The Applicants applied for an order under section 20C of the 1985 Act so that the Respondent may not pass any of his costs incurred in connection with the proceedings before the tribunal through the service charge. Mr Walder agreed with the Tribunal that it would not be open to the Respondent to pass on his costs through the service charge. However, for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

73. The Applicants also apply for a refund of the fees that they have paid in making this application, pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Applicants have succeeded with their application and the Tribunal is satisfied that it is appropriate to make such an order.

Judge Robert Latham
30 May 2022

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).