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

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| **Case Reference** | **:** | CHI/18UB/LAM/2023/0004 |
| **Property** | **:** | 5 Trefusis Terrace, Exmouth, Devon, EX8 2AX |
| **Applicants** | **:** | Mr Francis Raymond Whiteley |
| **Representative** | **:** | ---- |
| **Respondent** | **:** | Five Trefusis Terrace Limited |
| **Representative** | **:** | Mrs Domini Barrett |
| **Type of Application** | **:** | Appointment of Manager- section 24 of the Landlord and Tenant Act 1987 and Order pursuant to Section 20C of the Landlord and Tenant Act 1985. |
| **Tribunal Members** | **:** | Judge J Dobson<br>Mr M Woodrow MRICS<br>Mr M Jenkinson |
| **Date of Hearing** | **:** | 31st August 2023 |
| **Date of Re-convene** | **:** | 13th September 2023 |
| **Date of Decision** | **:** | 20th October 2023 |

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**DECISION**

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## Summary of Decision

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

2. **The Applicants applications that the costs of the proceedings are not recoverable as service charges or administration charges are refused.**

## Background

3. The Applicant is the lessee of one of five dwellings at 5 Trefusis Terrace, Exmouth, Devon, EX8 1AX ("the Property), more specifically Flat 3, situated on the second floor. The Respondent is the freeholder of the Property (which is also described in leases as The White House, 5 Trefusis Terrace…) and is a residents' owned company. There had originally been three flats formed from the original building, but subsequently a further flat was created and a two- storey property was created to the rear.

4. There are five shareholders, members of the company, in the Respondent of which four are also directors, the exception being the Applicant. In each case, the shareholder is a lessee of a dwelling at the Property.

5. The Applicant served a Notice pursuant to section 22 of the Landlord and Tenant Act 1987 ("the 1987 Act") dated 14th March 2023 [25-55], asserting breaches of various provisions of the lease in the Second Schedule, detailed in the Third Schedule and with required action in the Fourth Schedule within a period of two weeks. Given the length of the contents of the Third and Fourth Schedules, it is not practical to set them out in any detail. The Third Schedule set out 12 contended breaches of lease, 9 contended instances of unreasonable service charges which related to the nature or quality of work undertaken by contractors the costs of which had been charged as service charges, 61 contended instances of the breaches of the RICS Code of Practice and also 9 contended 'other circumstances'.

## The Applications and History of the Case

6. The Applicant made an application dated 14th April 2023 seeking the appointment of a manager (the/a "Manager" or "Proposed Manager" as appropriate) for the Property pursuant to section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") [3- 13]. A specific proposed Manager had been identified at that time, one Mr Samuel Milne MIRPM. A document headed "Statement of Management Plan" from him was submitted [14- 16 plus attached insurance document and again 257- 260].

7. The specific grounds for appointment of a Manager were that:

> "Since enfranchisement and incorporation in 2006 the freeholder, Five Trefusis Terrace Ltd, has repeatedly failed to maintain the proprty in an untenantable state of repair as proscribed by the leases.
> There have been 12 breaches of the lease.
> Management failures have resulted in 9 occurances of unreasonable services charges.
> There have been 61 failures to adhere to the RICS code of practice.
> There are 9 other issues incolving Civil Proceedings, Company Law, HSE and Fire Regulations."

The Applicant then expanded on those matters to varying extents. The clerical errors appeared in the Notice but do not affect understanding.

8. The Applicant also made a separate and ancillary application [56- 64] pursuant to section 20C of the 1985 Act that costs of the proceedings should not be recoverable as service charges. That stated, amongst other matters, that the Respondent had been actively searching for a management company (or more accurately managing agent) for over a year and that a unanimous resolution had been passed on 5th October 2022 to appoint, which the Applicant has proposed but the Applicant asserted that the directors had since been prevaricating.

9. Directions were first issued on 19th May 2023 [89- 93] which provided for steps to be taken to prepare the parties cases for final hearing. They did not, somewhat unfortunately, specifically provide for the proposed Manager to be in attendance so that the Tribunal could ask him any relevant questions. The dates and specific other matters were slightly varied by further Directions. A bundle for the final hearing was directed to be provided by the Applicant. A bundle was provided, of 326 pages.

10. Whilst the Tribunal has read the bundle, the Tribunal does not refer to many of the documents contained in detail in this Decision, it being impractical and unnecessary to do so. That should not be taken to suggest that the Tribunal has failed to read or take appropriate account of any such. Insofar as the Tribunal does refer to specific pages from the bundle, the Tribunal does so by numbers in square brackets [ ] (both above and below) and by reference to pages of the PDF bundle.

## The Inspection

11. The Tribunal inspected the Property on the day of the hearing and prior to the hearing commencing. The Tribunal is grateful to Mrs Barrett and the Applicant for facilitating access to communal internal areas and the Applicant's flat in addition to the external areas. The weather was raining for much of the inspection and damp for the remainder.

12. The Property is situated in a row of similar period properties in an established residential area with the front overlooking a park area which includes Exmouth Cricket Club and some tennis courts, amongst other features. The view then extends to the sea.

13. The Tribunal was first shown the side porch which leads to the door serving the communal hallway and staircase for access to Flats 2 and 3. To the rear of the porch were stores for use by the lessees of each of those flats. The porch is described in the bundle as having suffered from water ingress. It was explained at the inspection that a portion of the roof has been removed.

14. In the hallway common to Flats 2 and 3, the alarm system was seen. The Tribunal was shown new panelling to the cupboard under the stairs.

15. The Tribunal saw an area of water staining to the sloping roof of the Applicant's bedroom to one side of the dormer window to that room. The Tribunal identified that area to be relatively small and smaller than the Tribunal had perceived from photographs in the bundle.

16. The Tribunal was also shown the bathroom of the Applicant's flat and the kitchen, the latter principally for the purpose of viewing the flat roof behind it and related features including the former position of a flue.

17. The Applicant was very concerned in his application and statement about the flue to a solid fuel burning stove, which it was indicted that the relevant lessee agreed in the course of the proceedings to remove [318], but which the Applicant was doubtful would be removed. The Tribunal was shown that it had in fact been removed although it was identified at the inspection where that had been situated.

18. The Tribunal also saw the thin and rusty fire escape ladder to which reference had been made (mentioned further below).

19. The Tribunal accepted that a degree of maintenance of the Property was required but regarded that as relatively modest. The Tribunal identified significantly less than the Applicant's case had suggested there to be. The Tribunal concluded that there were matters which required attention but overall the Property was in reasonable condition.

**The Hearing and onward**

20. The hearing proceeded in person, save in respect of Mr Milne, at Exeter Crown and County Court and continued for the remainder of the day, finishing at approaching 6pm.

21. The Applicant represented himself. The Respondent was represented by Mrs Domini Barrett (a lessee of Flat 2) and Mr Mark Hughes Gough, although Mrs Barrett has been left as the representative on the header to this Decision, consistent with the Directions. The Tribunal is grateful to all of those for their assistance in this matter.

22. No specific oral evidence was given. That said, comments by Mr Whitely and by Mrs Barrett and by Mr Gough arguably briefly strayed into evidence on occasion and the Tribunal was alive to that. Written evidence had been provided by the Applicant [94- 105] and by Mrs Barrett [217-228].

23. It was agreed by the parties that there had been breaches of the Lease and that the Tribunal was not required to reach a determination on every aspect of that. Rather the parties agreed that it was appropriate to focus on whether or not it was just and convenient to appoint a Manager and, if so, the Tribunal identified that it would need to be satisfied that Mr Milne was suitable to be that Manager. That was helpfully in enabling the hearing to focus on that aspect and in facilitating the hearing completing on the day despite delays due to complications. One relevant factor was, as explained below, that the Respondent had also proposed Mr Milne as its managing agent.

24. It also merits recording that the Tribunal did explain carefully to the parties the difference between a managing agent and a Manager appointed by the Tribunal following an application being granted, the distinctions being notable and the parties not being fully alive to them. The Tribunal also explained the powers which could be given to a Manager and that those need not reflect the provisions of the Lease (or leases) but could be enhanced, including in terms of ability to require payments.

25. The most notable complication with the hearing was that the proposed Manager was not in attendance and, the Directions not having specified that he must attend, it had not been identified by the parties that his attendance may be of assistance and he had not been informed that he would need to be in attendance. The Tribunal does not seek to criticise the parties, recognising that they have not been involved in proceedings to consider the appointment of a Manager previously (although of course parties would do well to find out as much as possible about the nature of proceedings in which they are involved and to identify what may be useful to themselves and to the Tribunal).

26. In the event, it was possible for contact to be made with the proposed Manager and for him to attend the hearing remotely during the lunch in a seminar he was attending remotely that day. The Tribunal took its own lunch break following hearing from the proposed Manager.

27. It is not necessary, in light of the determinations set out below, to refer in detail to the evidence of Mr Milne in respect of his experience and appropriateness to be a Tribunal appointed Manager, notwithstanding that the Tribunal asked him a number of questions and heard from him across approximately one hour.

28. The Tribunal made no decision about that appropriateness in the event, given that the Tribunal was not persuaded that appointing a Manager was just and convenient and therefore the suitability of the specific proposed Manager was not relevant. The Tribunal maintains an entirely neutral position on whether or not it would have appointed Mr Milne if it had gone on to consider that question. It is the fact of the intention to appoint such an agent rather than an analysis of the particular agent which was the relevant point.

29. The Tribunal does make one observation in the event it may be of assistance to the parties or Mr Milne in the future- or indeed to any other prospective parties to an appointment of a Manager application who may chance across this Decision. That observation is that Mr Milne had not apparently been asked to visit the Property and had not done so. He could give no information as to the condition of the Property or the work which may be appropriate to undertake, or indeed any other features of the Property. An attempt to prepare a management plan without any first-hand knowledge of the property is question is always unlikely to be regarded by a Tribunal as of much assistance and in this instance a plan which was in extremely generic terms was of little assistance. The agreement of a proposed Manager to act as Manager of a property he or she has never seen is likely to be received with some concern.

30. It is highly likely that if the Tribunal had considered that it was just and convenient to appoint a Manager and been content that Mr Milne was in general terms suitable for appointment, the Tribunal would have directed Mr Milne to attend the Property and then provide a management plan prepared with some actual knowledge of the Property and the steps which were required to manage it. The Tribunal would then at a subsequent hearing have considered whether to appoint the specific proposed Manager, although of course that need for a proper management plan and a further hearing would have resulted in delay of several weeks, not to mention the additional public and other resources involved. If that had been a necessity, that is what would have happened: it would not have made that scenario attractive.

31. In light of the complications during the day and the time at which the parties' cases finished, it was not possible for the Tribunal to consider its decision. It was therefore necessary for the Tribunal members to arrange to re- convene on a mutually convenient date, in the event a fortnight later than the hearing.

32. The Tribunal does not either here, or subsequently, set out the parties' cases advanced at the hearing or otherwise in writing, at length in advance of discussion of the relevant issues. The Tribunal refers to the relevant parts of the parties' cases in its consideration of the issues below.

33. This Decision seeks to focus on the key issues, predominantly the appropriate way forward given the parties' agreement and not to cover every last factual detail, in particular of the disputes about alleged past breaches. There were a number of different issues raised by the various parties, many of which the Tribunal has referred to. Not all of the various matters mentioned in the bundle or at the hearing require any finding to be made for the purpose of deciding the relevant issues in the Application. Even so, the Decision is relatively lengthy. It would be impractical and is unnecessary to address matters at even greater length. The omission to therefore refer to or make findings about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received.

**The Lease(s)**

34. A copy of the lease of Flat 3 ("the Lease") is provided in the bundle [66- 72 and concluding on 74]. There were subsequent Deeds of Variation of the Lease, also included in the bundle, on 1st December 1978 [part copy 73, between pages of the Lease] and on 21st February 1992 [75- 77]. The insertion of a single page of the 1978 Variation within the limited number of pages of the Lease and between the plans and rear page and the last substantive page of terms caused some confusion to the Tribunal and some initial difficulty in discerning the relevant terms of the Lease.

35. The bundle also contained a lease (incomplete) for Flat 1 [106- 115], for the lower ground floor flat Flat 1A [242- 256] and for the dwelling built onto the rear of the main part of the Property, "The White Cottage" [116- 125]. The Tribunal refers to the four leases in the bundle collectively as "the Leases". The Leases need somewhat greater comment than might ideally be required, for the reasons explained below.

36. The Tribunal noted that the Lease and the other leases are in broadly similar terms overall- although not the same terms. It will be seen just from the page numbering that the individual complete Leases are different lengths. The reason for that was not apparent. It is stating the obvious to say that the leases of different flats or dwellings in the same building being in the same terms, save where there is a specific necessity for there to be differences, is preferable.

37. The Lease is dated 29th November 1957 and so is not a modern lease in terms of age and nor is it in terms of style. The Lease is very short by modern standards and the provisions are relatively limited. It granted a (somewhat unusual) 78 - year term commencing on 29th September 1957. Neither of the parties in this case are the original contracting parties. The Lessor at the time was an individual. The fact that the lessor is now the Respondent and so a company whose members are the lessees is not identifiably envisaged by the Lease. Whilst the term was subsequently extended and the contribution fraction altered, the other operative provisions remained the same. The Lease contains a number of relevant provisions, as set out below.

38. Clause 2 requires the Applicant to pay the rent (£10.00) on 29th September of the given year and to keep in good repair the flat, including decorating and cleaning windows, and not to make alterations without consent. The Applicant was also required to contribute to expenditure on various matters pursuant to clause 2(h). The share was originally mainly 1/3, reflecting there having been 3 flats formed with the Property in the first instance (as the first Variation makes plain) but has been altered by the subsequent variations such that it now reflects 1/5 of the overall costs (the share having been varied in that first 1978 Variation).

39. The expenditure to which contributions must be made is the building insurance and the "expense incurred" by the Respondent in meeting its repairing and maintenance obligations.

40. The basic rent of £10 per year is payable simply on 29th September of the given year. There is no period explicitly stated for the lessee's payments of contributions to other expenses, which are not expressed to be payment of additional rent, although clause 3 provides that if there is a breach of covenant or arrears for 30 days, the lessor has the right of re- entry.

41. The Tribunal construes the Lease as requiring a demand from the Respondent in respect of the expense incurred and the Applicant then having a reasonable time, say one calendar month, in which to make payment. There must be a timeframe for payment in order for the provisions to effectively operate. The Tribunal determines that to be the appropriate one to imply into the Lease.

42. Clause 4 sets out essentially the usual sort of maintenance covenant by the lessor, including in clause 4(c) to:

> "At all times during the said term to keep in tenantable repair structurally and decoratively the roof and outside walls boundary walls fences and gates and entrance doors and other outside parts of the said block of flats and all drains and water pipes and sanitary and water apparatus thereof and electric and oil or other central heating installations thereof and the internal walls and ceilings staircases landings and passages except as provided in clause 2(c) hereof"

43. The only other covenants by the lessor are to insure and to permit quiet enjoyment (and originally one relating to an oil- fired heating system which obligation was subsequently removed in the earlier Variation). There are two pages of the Lease showing plans and a rear outside page. There are no apparent Schedules to the Lease, the Lease making no reference to any.

44. The lease of Flat 1 is dated 16th August 1978. Rent is payable on 25th March and payment must be made by way of additional rent of 1/5 of the sums which the lessor "may expend" on insurance. There is an obligation on the part of the lessee to contribute 1/3 of some of the expenditure and 1/5 of other expenditure as mentioned and on demand. There is no apparent time provided for payment. Reference is also made to obligations on the Respondent in Schedule 4, to which payment contributions must be made. However, the copy provided does not include that schedule. Other obligations are set out in clause 4.

45. The lease of The White Cottage dates from 9th November 1978 and appears to be in the same form as the incomplete one for Flat 1, with the same payment provisions and including the Fourth Schedule. Those included maintaining and repairing windows, decoration, the fees of any managing agent and grounds including boundaries. In addition, there are covenants in clause 4(iii) (of this lease and that of Flat 1) in relation repair and maintenance of the main structure of the Property including the roof, chimney stacks, rainwater goods and other pipes, cables and similar. There are further obligations which appear to duplicate or be very similar to obligations in relation to windows, boundaries and the grounds.

46. The lease of Flat 1A dates from 1st October 1993 and is in a somewhat more up to date form than that of Flat 3. It requires payment towards the cost of insurance and sums expended in the Respondent complying with other obligations on the next rent day after the expenditure has been incurred, so only on the subsequent 29th September (clause 1.). That said, it also imposes a covenant to pay within 14 days of written demand 1/3 of some expenditure and 1/5 of other expenditure. Ignoring the fractions involved, at first blush there is a direct contradiction between clauses 1. and 4.2 as to timing of payment, which the Tribunal has not attempted to resolve in this case. However, in neither instance can money be demanded on account. Part 2 of the Fourth Schedule specifically refers to "expenses incurred", which fits entirely with the Respondent paying out and then seeking the money after. The Respondent's repair and maintenance obligations are at clause 5.(d).

47. The provisions of the Leases are less than wholly satisfactory. All else aside, the Lease of Flat 3 is, at least as presented to the Tribunal, repeated to be very brief, has required a term to be implied as to when service charges are payable and lacks many of the provisions which would now be expected. The others of the Leases contain different payment provisions and require payments on different dates.

48. At the time of the grant of the Leases, it may have seemed entirely satisfactory and have worked entirely well for the freeholder to pay out for matters and for the expenditure to be repaid by the lessees each year on the rent day or on demand, which one way or another is what the Leases provide for. At that time the lessor may have had other income and resources and been entirely able to meet any expenditure in connection with the Property and then recover it from the lessees by way of those payments as additional rent.

49. It should be said that the Tribunal does not know- the circumstances of the original contracting parties are not known. Their intentions can only, irrespective of principles of construction, be discerned from the imperfect words they used. The Tribunal takes no more than a somewhat- educated guess from the nature of the provisions as to what may have seemed appropriate at the various points in time.

50. Rather more pertinently, the provisions of the Lease do not provide for the sorts of payments on account of estimated expenditure and then balancing charges or credits which tend to be provided for in more modern leases and which are accepted as the usual- and usually effective- manner in which to provide for matters.

51. The variations in 1978 and 1992 therefore provided for some variation in terms but did not alter what is often termed the service charge mechanism, that is to say the manner in which service charges are demanded and to be paid. They did not fill in the obvious gap which has required a term to be implied or resolve the differences between the Lease and others of the Leases.

**The Law**

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

24 Appointment of a manager by [a .....tribunal]

(1) [The appropriate tribunal] may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this part applies-
  (a) Such functions in connection with the management of the premises, or
  (b) Such functions of a receiver,
  or both, as [the tribunal] thinks fit.

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

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

Tribunal to give to the manager such powers as it considers appropriate, not limited to those given to the freeholder under the Lease.

54. There is essentially what is often described as "a threshold criterion" for the making of an order that there is a breach made out, although equally there can be an order if relevant "other circumstances" have arisen, without a necessity for a breach to be found. That effectively involves the Tribunal looking backward. The breach can be only one of many alleged and can be modest. The fact of there being a breach or there being other circumstances does not mean that an order must be made, simply that one then may be made.

55. It then falls to the Tribunal to consider whether the making of an order is just and convenient. That involves rather more of the Tribunal looking forward. Several examples of factors which may support the making of an order or may support not doing so are identified in case authorities. Any specific decision must necessarily consider the interplay of any relevant factors in the particular case. The principle of appointing a manager and the appointment of a specific proposed manager are separate issues.

56. The Tribunal has, amongst its jurisdictions, a jurisdiction to determine the payability and reasonableness of service charges pursuant to the Landlord and Tenant Act 1985. Sections 18 and 27a are perhaps most notable. The Tribunal has regard to, amongst other matters, the RICS Code. That would all have been relevant in the event that detailed consideration of whether unreasonable service charges had been demanded and/ or breaches of the Code had been required. The provisions and requirements need not be set out in detail in the particular circumstances.

## Consideration

57. The Tribunal firstly addresses the question of breaches by the Respondent and then turns, more significantly, to whether it is just and convenient to appoint a Manager.

### Breach of the Lease/ the RICS Code of Practice/ regulatory requirements

58. The Tribunal does not dwell on this unduly, given the approach agreed by the parties as set out above. However, it is only appropriate to set out some of the key points made by the Applicant in support of his application and the treatment of those.

59. The Tribunal was satisfied that there had been a breach of obligation by the Respondent. That much was clear from the fact that there had historically been two judgments of the County Court in which the Applicant was awarded damages against the Respondent for breach of covenant, although the first of those was of rather greater note than the latter. The Tribunal accepted that the Courts found a breach of the Lease by the Respondent. The Tribunal adopts that.

60. In the earlier decision, the Applicant was awarded some £12,240.57, on 21st November 2013. In the later decision, on 22nd June 2020, the Applicant was awarded £1,944.15 for breach by the Respondent but was also ordered to pay £4,656.25 to the Respondent in respect of the Respondent's claim against him, the balance being significantly in favour of the Respondent.

61. Those were the two County Court judgments to which the Applicant referred. It was established that the payment to the Respondent by the Applicant, which was the net result of the second case, had not in fact been paid, leaving the Respondent £2,712.10 short of money awarded to it against the Applicant. It was common ground that the first judgment has been paid out by the Respondent: it was not discussed exactly how the payment had been made and who had contributed to the sum paid but nothing turned on that.

62. The Lease, at least as the Tribunal infers, contains a clear obligation to repair and maintain. The requirement in clause 4(a) of the Lease that the Applicant's right to quiet enjoyment is subject to "The Lessee paying the yearly rent and observing and performing the covenants by the Lessee contained herein (hence at first blush requiring the Applicant to contribute first) does not, the Tribunal determines, create a condition precedent preventing the Respondent being liable to the Applicant to repair and maintain. All else aside, 4 (c) makes no mention of the maintenance being subject to such payments.

63. It is not clear whether that argument was run before the Courts and what the Courts made of it. However, the outcome indicates that if the argument was advanced, it was not accepted. In contrast, if it was not run, it follows from the Tribunal's view of the provisions of the Lease that any argument that there was a condition precedent ought to have failed.

64. There is caselaw often referred to whether the question of there being such a condition precedent is relevant. In short summary, that sets a relatively high bar for a condition precedent to be held to have been created. The Tribunal does not consider it necessary to explore that in any detail in this case. Suffice to say that the Tribunal determined that the wording of the Lease was such that the lack of payment by the Applicant and the other identified circumstances were insufficient in this instance for such a condition to apply.

65. The bundle contained a survey report dated 23rd October 2013 by Mr Sean Mills MRICS [261- 265] which identified disrepair to the Property of a rather more extensive nature then. All of the dwellings suffered from damp although much of it condensation- related, as did communal areas. Various other issues were identified with the structure and exterior of the Property. The Applicant was recorded as complaining of damp staining to both of his bedrooms and the living room plus water ingress through the bathroom ceiling, and so apparently more extensive than seen on the inspection. That report is therefore contemporaneous with the judgment in the first set of Court proceedings. It was apparent that work had subsequently been

undertaken- there were issues about lack of payment to contribute to such work, there were invoices for works, there was a dispute about the adequacy of some works. A subsequent report by Mr Steve Wickes of Jemmy Ltd [267- 74] identified inadequate work to coping stones, which was based solely on an overview of some photographs and unnamed documents, suggested inadequate work to areas including to the parapet and coping stones.

66. There was also part of a report [275- 282 ] from Mr Rob Holman MRICS dated 3rd January 2018. That refers to a survey inspection of the building being carried out, both internally and externally, which included a roof inspection by controlled lift. A problem with condensation and lack of air flow was identified to Flat 1, a particular exterior issue was identified as causing damp to Flat 2. Whilst there were some damp marks to sloping ceilings to the front elevation of Flat 3, no problems with the roof could be identified and the report simply advised further investigation if further water ingress occurred. It was not apparent to the Tribunal whether that was provided to the Court in the more recent proceedings or what impact it had on the outcome.

67. Specific findings made in the two sets of Court proceedings are not known to the Tribunal, which therefore steers clear of any other comment about matters up to June 2020.

68. Without wishing to detract unduly from the lack of need to make detailed findings regarding breaches, the Tribunal does address to a limited extent more some recent matters in respect of maintenance of the Property and some other allegations.

69. The water staining to the sloping ceiling of the Respondent's bedroom seen at the inspection indicated that work was or had been required to the roof of the Property. However, the water staining was minor, being a smaller area than the Tribunal had perceived from the limited photographic evidence submitted [152]. It was not apparent to the Tribunal that it had worsened between the photograph and the inspection or indeed since work undertaken to the roof in 2018. That may simply reflect the photographic evidence not being clear but does not assist the Applicant in proving an ongoing problem. There was no clear evidence that other than the staining in itself and hence damage to decoration, there had been any significant effect. Whilst attention is required, the effects demonstrated are at the modest end of the scale.

70. However, the Respondent conceded in the statement of Mrs Barrett [particularly 222] that the roof needs further inspection, from scaffolding, to identify possible defects and so accepted that there may well be an ongoing problem- without explicitly accepting one.

71. In addition, whilst the Applicant also provided photographic evidence of black mould to the bathroom of his flat, the Tribunal considered that there was insufficient evidence to demonstrate that was caused lack of repair and maintenance of matters within the Respondent's responsibility.

72. The Tribunal was not required to make any specific determination as to the quality of particular previous repairs, including to hidden areas, or whether health and safety guidelines had been followed. It may have been quite difficult to do so one way or the other on the information provided by the parties but there is no need to dwell on that.

73. The Tribunal was not persuaded that the Applicant's allegation that the directors of the Respondent lacking professional indemnity or other similar insurance previously would be a breach of any relevant requirement in any event. At the very least, the Applicant did not demonstrate such a requirement and the breach of it. Given the Applicant asserted that visitors would thereby be exposed to financial risk without clearly explaining what sort of risk he suggested, the Tribunal was unclear whether there was confusion with occupier's liability which would be likely to form part of the building insurance cover, noting that director's indemnity insurance is not the same and would cover specific types of claims against the directors acting in that particular capacity. There is no requirement under the Lease for such insurance and in the event that the Respondent's company's constitution requires, which was not demonstrated, it is likely that would even so weigh lightly in a case of this nature.

74. For the avoidance of doubt, the Tribunal noted there to be insurance in place from March 2023 [233- 236].

75. There were also allegations about a lack of building insurance for a period and about not disclosing all relevant information, which were denied. However, as the approach agreed did not require findings to be made, none are.

76. More significantly, the Applicant alleged breaches by the Respondent of requirements in respect of fire safety, specifically an ongoing failure to provide a Fire Risk Assessment to the Devon and Somerset Fire and Rescue Service and a subsequent Fire Audit.

77. The bundle included a letter from the Fire Service dated 16th April 2022 [298- 308] which identified fire risks, gave a schedule of 7 items requiring action and/ or works and required a fire risk assessment. A fire ladder was also stated to not be suitable for use. Seven items required attention. Plainly therefore there were matters which were not wholly satisfactory at that time. In addition, [199- 201] following a further inspection, clarification was provided in correspondence dated 6th December 2022 regarding reducing the risk from the polycarbonate side porch roof and the understairs cupboard. Photographic evidence in the bundle showed that at least the storage shelving had been removed from the cupboard and the Tribunal saw the work undertaken to the side porch roof at the inspection.

78. There was also correspondence from the Fire Service back in 2012 [156] regarding the external fire escape ladder- from the flat roof above The White Cottage which is accessible from the Respondent's flat- but that

essentially posed various questions about that, although noting that if it was not suitable, an alternative escape route safe from fire as required, requiring a risk assessment and potentially work around the communal staircase. That letter was quite old and overtaken by more recent communications. However, it appeared to the Tribunal that where it had indicated that a fire risk assessment was required by the Respondent and the communal staircase areas may require works to ensure fire safety, that had not progressed sufficiently, if at all, by 2022.

79. Fire safety is quite rightly a topic of significance in relation to properties. However, the bundle also included a further communication dated 11th July 2023 in which it was said that fire safety was reasonable, although a couple of items were identified as meriting attention. The Fire Service particularly emphasised that the ladder should not be used, although there was no identifiable need for it to be. It was apparent to the Tribunal that at least as at that point, action had been taken by the Respondent and the Fire Service was stated not to be troubled about fire safety at the Property. Evidence received demonstrated action having been taken, including the installation of a fire alarm system.

80. The Tribunal determined that there was no identified breach at the time of the hearing, although there had been previously. The Respondent appeared to have understood the requirements and be alive to them in recent times, if not fully at earlier ones.

81. Taking matters overall, the Tribunal considered that there had been breaches of requirements, including the requirements of the Lease, and there were other circumstances which could make it just and convenient to appoint a Manager. The Applicant had crossed the threshold facilitating such an appointment.

**Just and Convenient?**

82. The Tribunal now turns to the key question, namely whether it is just and convenient to now appoint a Manager to manage the Property.

83. The answer to that question is that the Tribunal does not consider it just and convenient, for the reasons explained below.

84. It is relevant to the answer to that question that whilst the Applicant expressed a long list of concerns, the Tribunal at the inspection only identified relatively minor matters. It was equally very relevant that the Respondent is a lessee- owned company which inevitably relies entirely on contributions from the lessees/ members in order to meet any expenditure, including for any appropriate repair or maintenance work. It is also of some relevance that the Tribunal considered that the parties did not sufficiently understand about managing a property and that had hampered the approach to managing the Property. The Tribunal also found that the Applicant was overly critical.

85. It is often said, not with complete accuracy but reflecting the high bar to clear for a Manager to be appointed, that such appointment is a last resort. The Tribunal does not go so far but recognises that the bar is high. The Tribunal determines that matters do not go so far as to make the just and convenient outcome to be the appointment of a Manager.

86. That determination inevitably involves the exercise of judgment by the Tribunal and the careful weighing of competing considerations, in order to reach a determination as to whether an appointment is just and convenient in the circumstances of the particular case.

87. The Tribunal considered four matters to be of particular note and addresses those below.

Lack of payments

88. The first is that whilst the repairing obligation in the Lease did not create a condition precedent such that the Respondent could say that it was not required to undertake works unless the Applicant had paid service charges and had otherwise complied with his own obligations- and hence the Applicant was able to pursue his claims for breach of covenant despite not paying his contributions- nevertheless, the simple fact of the matter was that the Respondent had less in the way of service charge funds available than it would have if the Applicant had so paid.

89. The Tribunal found it to be an obvious consequence of less money being received by the Respondent that less could be paid for from the service charges funds. The Applicant's lack of payment had contributed to just the situation on which he relied in support of his application.

90. The lack of payment is ongoing, which the Respondent asserted and which from the Applicant's comments at the hearing the Tribunal found to be correct, reflects the fact that the Applicant believes that he would succeed in a further claim for loss of enjoyment. The Applicant said in correspondence to the Respondent in February 2022 "As I have intimated before, I consider I may have a claim for loss of quiet enjoyment and reserve the right to withhold further monies as the amount remaining will easily be covered by any subsequent claim"- and hence he contended that despite not having made payments he was nevertheless not in default. It was apparent at the hearing that his position remained unchanged.

91. It is not clear to what extent the Applicant has carefully noted the outcome of last set of Court proceedings, in which the amount awarded to the Respondent comfortably exceeded that awarded to him. In any event, the suggested ongoing approach is unattractive. The Applicant is said to owe £1387.62 by way of contributions to works, which the Tribunal has no reason to doubt to be correct, given the manner of the Applicant's position.

92. The assertions made in communications on behalf of the Respondent that it could not undertake works until payments were received were wrong, given that one was not conditional on the other, and if necessary funds had

to be sought in other ways. However, the Tribunal does not regard withholding payment, preventing the Respondent having the funds it ought, on the basis of potentially succeeding to any extent in a future claim which has not been brought is a satisfactory approach for the Applicant to take.

93. The lack of a condition precedent is only the start and not the end of the story. The Tribunal finds the fact that the Applicant has complained and does complain about a lack of work but refuses to pay his contribution to the cost of undertaking that work is the element of the picture of most note. That weighs against appointing a Manager.

Managing agent

94. The second was that the Respondent had accepted that the assistance of a managing agent would be helpful and had communicated with Mr Milne to be appointed as the managing agent.

95. It necessarily follows from the previous findings of Courts that whilst the Tribunal accepts that the directors have probably approached management to the best of their abilities, those have been imperfect. The Tribunal formed the distinct impression of insufficient knowledge and experience of property matters and property management. That is not unusual with lessee- owned companies but is a difficulty where the management of a property has been taken on.

96. By way of example, the Respondent's case talked about a recent notice pursuant to section 20 of the Landlord and Tenant 1985 regarding the intention to instruct a surveyor to prepare a report. However, that is not a matter covered by the consultation requirements. It is of itself a small matter but it serves as a demonstration during the proceedings of a lack of understanding.

97. The meeting minutes, particularly from that in October 2022 [207- 211] indicated that repair and maintenance was a topic of concern to the other lessees and the Respondent of which they were directors. Discussions about works, quotes and future maintenance were minuted and the lessees were said to be agreeable to funding the works, except the Applicant, who was not. There have plainly been previous reports commissioned from surveyors in relation to works required: there have equally plainly been contractors instructed and works undertaken. The criticism which can be made of the Respondent is not therefore one of disinterest in repairs but rather of insufficient speed, of understanding that the lack of payment by the Applicant does not prevent the need for repairs and, perhaps, the lack of appreciation about quality of works. The Tribunal did not find the extent of failings to be nearly at the level asserted by the Applicant.

98. Given the Tribunal had some concern about the ability of the Respondent and its directors to manage the Property sufficiently effectively, it is right to say that if there had not been agreement to appoint a managing agent, the Tribunal may have been better persuaded that the appointment of a

Manager may be appropriate. That is a Manager with strong powers to ensure receipt of funds to undertake the steps required and, of course, at cost for acting as Manager.

99. The Tribunal was mindful that even with the same person being involved, the appointment of a managing agent and the appointment of a Tribunal-appointed Manager are not the same thing. A managing agent will necessarily act in accordance with the instructions given by his or her principle and is not able to manage independently of those. In contrast, a Tribunal- appointed manager is not subject to the instructions of the freeholder or other party.

100. However, the agreement to appoint a managing agent was a significant change to the situation from that which existed at the time of the previous Court judgments and indeed from the situation at the time of the section 22 notice and the application to the Tribunal. The Tribunal considered that the naivety of the Respondent's directors in property management matters required the involvement of someone with experience of such management. The overall reasonable condition of the Property and the lack of matters requiring urgent attention were such that there is time to implement steps to address matters where action should be taken and does not produce an immediate reason to appoint a Manager.

101. There has been a delay from the resolution passed in October 2022, where the unanimous vote in favour of the appointment at that time indicated an accepted by all lessees/ members of the Respondent company that professional assistance with management of the Property was required.

102. The Applicant's case, as expressed in his section application, was that the Respondent had since been prevaricating. He had said that there had been ample time for a managing agent to be found and appointed. He also expressed concern at the time that no agent had yet been appointed.

103. The Respondent's case was that it sought to instruct managing agents. Meeting minutes [207- 211] indicate that two companies were under active consideration as at October 2022, one which the Tribunal notes identified issues with the terms of the Leases. There is no obvious reason to consider those minutes to be incorrect, which was not in any event alleged. The statement of Mrs Barrett asserted that four companies were met with and that the Respondent had been in regular contact with Modbury Estates Limited, Mr Milne's company, since May 2023. By July 2023, the Respondent had agreed to appoint that company.

104. Mrs Barrett suggested at the time of her statement that what was then a period of 5 months was not unreasonable, although of course by July 2023 another approximately 4 months had elapsed. The Tribunal does not entirely agree and considers that, when viewed through the prism of the history and situation, the instruction of an agent should have been progressed more swiftly.

105. The Tribunal determined that the Respondent had made efforts to instruct an agent following the agreement that it do so, albeit that none had been appointed by the date on which the Applicant's application was made. It could not be found by the Tribunal that the Respondent had deliberately stalled the process. The Respondent had further reached an agreement to appoint an agent, Mr Milne or rather Modbury Estates Limited.

106. Given that the Tribunal considered it quite likely that the Respondent could have done more to accelerate the process and there was a lack of alacrity during the first half of 2023, the Respondent's approach can be termed unsatisfactory and slower than a full appreciation of matters should have produced.

107. The Tribunal lastly mentions whilst discussing this factor, and further to its observations in respect of appointment of a Manager above, that it was somewhat concerned about Mr Milne accepting the appointment as managing agent instructed by the Respondent at the same time as agreeing to be the Manager appointed by the Tribunal. This is not the first time that the Tribunal has encountered someone proposed as Manager then being approached by the lessor or management company and being asked to act as managing agent. Such person puts themselves in the difficult position of acting for one of the parties where the Tribunal is being asked to consider their appointment as someone able to act independently of the parties. There is an obvious potential for conflict. The lack of identification of that may also not serve to impress the Tribunal of their suitability more generally. Those are general comments and the Tribunal did not need to consider the appropriate application of them to the situation in this case and so reached no conclusions.

108. As will be identified, this factor also weighs against appointment of a Manager.

Issues with the Leases

109. The Tribunal thirdly considered carefully the potential benefit in appointing a Manager who need not be constrained by the terms of the Lease (or indeed Leases) and could be given additional or varied powers, most obviously by being able to make an initial demand for funds from the lessees. The fact that neither the Applicant or the Respondent's representatives seemed uncomfortable with that served to emphasise the potential merit of such an approach rather than the opposite. The Manager could focus on what was required to deal with effective management of the Property in a manner that the lessees may not seek to do themselves, but which may be necessary.

110. The Respondent and any managing agent instructed by the Respondent necessarily are constrained by the terms of the Leases, subject to company law rights- and dependent on whether a given lessee takes any point about the specific lease terms or is content for them not to be followed. There are, as explained above, clear problems with the payment provisions being for

payments in arrears and potentially quite significantly in arrears in some instances and then not on the same dates for each one of the Leases, (assuming always that the versions in the bundle are the current ones as the parties seem to accept). Managing the Property in accordance with the different terms of the various leases may be challenging (and require a different approach dwelling by dwelling), even for an experienced property manager.

111. However, the Tribunal was also mindful that the appointment of a Manager in such a situation would only provide short- term relief for the problem. The Tribunal did not consider it appropriate for there to be a long- term appointment of a Manager as a substitute for resolving the issues with the Leases. A short- term appointment which would enable service charges to be demanded on account by the Manager pursuant to powers which the Tribunal could grant and then attend to any outstanding repair or similar matters had some attraction. The parties would have been given a time in which the terms of the Leases did not apply and in which they could attend to variation of the Leases to make more effective provision for service charges and any other appropriate matters.

112. The parties would nevertheless have needed to agree the terms of variation of the Leases and the other leases, assuming agreed, to make equivalent provision on an ongoing basis. As to whether that would have occurred was unclear but, Manager or not, it is to be hoped that if the lessees could all see the benefits, suitable terms may be agreed.

113. The Tribunal was equally mindful that if the lessees do agree then in principle the variation of the leases could be dealt with fairly swiftly. The difficulty with the current provisions need not continue very long. In any event, the Respondent could call on its members to provide funds to facilitate the company's activities, re-imbursing, if relevant, as and when any separate service charge funds were received. As the same persons would be involved that may be more of an accounting exercise than anything else.

114. The Tribunal concluded that whilst the appointment of a Manager and the granting of powers to a Manager was one method of over-coming the issue of the terms of the leases not permitting payments on account of estimated service charges, it was not the only way and that issue added little weight to the merits of appointing a Manager where other solutions were available and would have to be found in the short to mid- term in any event. This factor is therefore relatively neutral.

Applicant's willingness to frustrate a Manager

115. Lastly, and it should be said the most significant factor in the final analysis, the Applicant stated in the hearing that he would not be bludgeoned into agreeing anything he did not want to and that if he did not agree to pay and would only pay charges if he felt them to be justified and fully accounted for. He added that that if he withheld money demanded by

way of service charges by the Manager and consequently the Manager pursued him for such sums, he would counterclaim.

116. Indeed, the very clear approach of the Applicant identified by the Tribunal was that if he did not agree with a matter, he would be obstructive.

117. The Applicant evinced a willingness to impede the Manager he wished to have appointed from being able to effectively manage the Property by receiving the funds required for that. Inevitably if the Manager determined that certain matters required action, for example repairs to the Property, and the lessees did not put the Manager in funds to attend to such matters, the Manager would not be able to proceed with them.

118. The Tribunal did not consider it just and convenient to impose a Manager against the wishes of the Respondent freeholder and inevitably interfering with its property rights at the behest of one individual lessee where that lessee was prepared to stymie the actions of the Manager, leading to ongoing difficulties for the Manager and otherwise for the Property.

119. The Tribunal is very much mindful that a managing agent seeking to operate within the terms of the Lease may face difficulties if the Applicant approaches matters in the manner that he has indicated. However, the Tribunal did not consider that to render it just and convenient for a Manager to be appointed who may be given powers to ameliorate some of the issues with the terms of the Lease but may still face similar difficulties from the Applicant.

120. It necessarily follows that this factor weighs, strongly, against appointment of a Manager.

**Decision in respect of the appointment of a Manager**

121. The Tribunal re-iterates that it has decided that it is not just and convenient for a Manager to be appointed.

122. Given the above decisions made, the Tribunal has not been required to reach a decision as to the suitability of the particular Manager proposed by the Applicant and so clarification of any matters is not required.

**Note regarding ongoing management of the Property**

123. The Tribunal considers that the parties need to take very careful note of the fact that this is a small block. There are only the five dwellings and any funds must be generated from the lessees of those as lessees or otherwise from the exact same people as members of the company. The Respondent is not some distant entity and does not have any outside interests and resources, It owns a freehold of modest value.

124. It is a simple reality, if one perhaps unsatisfactory to the Applicant, that a proportionate share of any claim for which he may succeed, if on careful reflection he seeks to make one, whether by a counterclaim against service charges demanded or otherwise, will come out of his own pocket. He is one of the members of the Respondent and can be called upon to contribute just the same as the other members (see further below). Equally, any money expended on any claim by him will use funds which might otherwise be spent on undertaking work and addressing the underlying works.

125. Given that the Respondent's repairing obligation is not conditional on the Applicant contributing his share of the required funds but that without the funds, matters may well not be able to be attended to, there is a danger of the parties going round in a circle indefinitely.

126. That is likely to involve considerable time and effort, to produce considerable ill—feeling and generally to detract significantly from the enjoyment by all involved of their properties. The Tribunal urges the parties to work very hard to find a mutually agreeable way of moving forward and so avoiding that situation.

127. It may be that if the Applicant makes payments sought by a managing agent instructed by the Respondent as and when required and nevertheless matters are not appropriately addressed that in due course, the appointment of managing agents looks less of a positive than it currently does. It may be that the prospect of the Applicant obstructing management by a Manager also appears a lesser one. It could be that in such circumstances, a Tribunal would then take a different approach. Equally, if the Applicant is proved correct and the Respondent changes its mind about the instruction of a managing agent and instead seeks to further manage the Property itself without doing so effectively, it is possible that the concerns about historic failings would become more relevant or that other matters arise which cause it to then be just and convenient to appoint a Manager.

128. It is to be hoped that if the proposed managing agent proceeds, and given that the agent is the person who the Applicant wished to appoint as Manager and in whom the Applicant presumably has confidence with regard to management of the Property, the Applicant will indeed make payments and will more generally co-operate in facilitating the effective management of the Property, including the undertaking of any required repairs and maintenance. It must be entirely possible, but without seeking to bind any future Tribunal, that a future Tribunal would be unimpressed with lack of payment and co-operation by the Applicant.

129. However, all of that is to venture into speculation about matters which may or may arise in the future. The Tribunal is cautious not to seek to fetter the Respondent's ability to manage the Property that it owns or to pre- judge the approach which may be taken by the Tribunal in the future on the facts then existing.

130. The above observations are also not intended to encourage further applications unless clear ongoing issues arise and are in any event heavily caveated by the need on the one hand for the Applicant to make the payments demanded and secondly work then not to proceed or other failings to exist.

131. Finally, the Tribunal returns to a matter noted right at the start of this Decision and briefly mentioned on other occasions. That is that each of the lessees is a member of the Respondent company. The company has the right to require payments from its members. The determination of any issues as to the rights and obligations as between the Respondent and its members do not fall within the jurisdiction of the Tribunal and the specific rights and obligations have not required examination in order for the Tribunal to reach the decision on this application which is within its jurisdiction.

132. However, the rights are not irrelevant and it can be uncontroversial to state that in practice if the Respondent cannot obtain sums as and when it needs them by way of service charges, it is able to exercise its right to require payments by its members. It may be that some of the issues to date could have alleviated by use of that right and it may be that potential future issues as to payments under the leases of the flats can be reduced or avoided. Any issues as to service charges are somewhat reduced in relevance by this alternative route to obtaining funds to enable works.

**Applications in respect of costs and refund of fees**

133. As referred to above, an application was made by the Applicant that any costs incurred in connection with proceedings before the Tribunal should not be included in the amount of any service charge payable by the tenant pursuant to section 20C of the Landlord and Tenant Act 1985. The Tribunal understands that the matters set out in paragraph 8 above were provided by way of explanation as to why the Applicant considered it appropriate to apply for the appointment of a Manager and why consequently any costs of the Respondent ought not to be recoverable as service charges against the Applicant.

134. The Tribunal is given a wide discretion to do that which it considers just and equitable in all the relevant circumstances. Whilst there is caselaw in respect of general principles, in practice much will depend on the specific circumstances of the particular case.

135. The Tribunal does not consider it to be just and equitable to grant the applications in full in light of the Applicant's lack of success in this matter and in light of the wider circumstances. The first element alone is not determinative, although it is never irrelevant. The Tribunal will always bear in mind the potential practical and financial consequences of the approach taken, but that is only one of a number of relevant considerations.

136. The Tribunal did not need to determine and did not determine whether, but for the agreed appointment of the managing agent, a manager would have been appointed. There is a large element of wait and see how successful that appointment proves to be in ensuring all matters are addressed appropriately on an ongoing basis. It will be appreciated that the Tribunal has identified the intended appointment of a managing agent as one factor, although not the only one nor the weightiest one.

137. There have been some failings identified on the part of the Respondent and those included the Respondent not having progressed the instruction of the managing agent at the time of the Applicant's application. That gives some additional merit to the application when made, much as matters have moved on. The Tribunal has taken account of that. However, given the other significant reasons why the Applicant's application failed, the clear balance was, the Tribunal considered, against it being just and equitable to grant the section 20C application.

138. There was no corresponding application made by the Applicant pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. The Tribunal did not invite one and does not consider it necessary to now do so. The effect of such an application being made and succeeding would be that costs of the litigation would not be recoverable as administration charges.

139. The test is not exactly the same as it is for the section 20C application, the wording of the two provisions being slightly different. However, for practical purposes the considerations are so closely aligned that the outcome of one is invariably the same as the other. Given the Tribunal's experience of deciding applications made pursuant to paragraph 5A and the clear outcome of the section 20C application, the Tribunal is confident that if a paragraph 5A application had been made, the outcome would be the same.

## RIGHTS OF APPEAL

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.

3. 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.

4. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.