



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

Case Reference	:	CHI/24UG/LAM/2020/0008 CHI/24UG/LVM/2023/0007 CHI/24UG/LVM/2023/0008 CHI/24UG/LLC/2023/0004 CHI/24UG/LSC/2023/0133
Property	:	Providence House, Bartley Way, Hook, Hampshire, RG27 9FG
Applicants	:	Samantha Aspey and others
Representative	:	Ms Lara Kuehl of Counsel instructed by Setfords Solicitors
Respondent	:	Bartley Way Limited (save 0133)
Representative	:	Ms Ceri Edmonds of Counsel instructed by Clarke Mairs LLP
The Old Manager	:	Mr James Farrow (and Respondent in 0133)
Representative	:	Mr Ian Cain of Counsel
The New Manager	:	Mr Michael Jacobs
Tribunal members	:	Judge J Dobson Mr N Robinson FRICS Mr M Woodrow MRICS
Date of Hearing	:	16 th November 2023
Date of Order	:	7 th December 2023

DECISION

Summary of the Decision

- 1. The Applicants' application for variation of the Appointment of a Manager Order for Providence House, Bartley Way, Hook, Hampshire, RG27 9FG is granted, save as identified below.**
- 2. The application by Mr James Farrow for termination of his appointment as Manager is granted as from 24th November 2023.**
- 3. Mr Michael Jacobs is appointed as Manager with a start date of 24th November 2023 for the period to 31st March 2025 on the terms set out in the Management Order dated 7th December 2023 and pursuant to section 24(1) of the Landlord and Tenant Act 1987.**
- 4. Mr Farrow, Mr Jacobs and the Respondent must, where it applies to them, comply with the terms of the Management Order, including but not limited to the Directions to them included in that Order.**
- 5. The part of the Applicant's application that seeks an order that the Applicant be entitled to recovery of service charges from Mr Farrow is dismissed, although a further application may be made in due course if considered appropriate.**
- 6. The application for determination of the payability and reasonableness of service charges is stayed to 31st March 2024.**
- 7. The application for an order that the Respondents costs may not be demanded as service charges is marked withdrawn.**
- 8. If any party which has paid a fee wishes to apply for an order that the fee be borne by any other party, such party may apply by 8th December 2023.**

Background, the Property and leases

9. As recorded in the Decision dated 22nd July 2021, the Applicants made an application dated 7th July 2020, for an Order appointing a manager for Providence House, Bartley Way, Hook, Hampshire RG27 9FG which consists of the building itself (“the Building”) and some land around it (“the Curtilage”) (collectively “the Property”) in accordance with section 24 of the Landlord and Tenant Act 1987 (“the 1987 Act”).
10. The Applicants are the Lessees of various flats within the Building. The Respondent is the freehold owner of the Property. The Respondent’s title is registered with title number HP375112 and the bundle included plans of that title. The Applicants, other supporting leaseholders who are not Applicants and the four other residential leaseholders who it was said did not oppose the application (collectively “the Lessees” and singular “Lessee”) hold long leases (“the Leases”) of the flats (“the Flats” collectively or “Flat” singularly”) within the Property. A sample lease (“the Lease”) specifically of Flat 73, granted to Ms Samantha Aspey, has been provided with the application made.
11. There are one hundred and seven Flats in total (in addition to which two more intended flats were still in the process of being built at the time of the hearing), of which forty-six remained in the ownership of the Respondent, over 40%. Thirteen of those had been let to tenants and thirty-three had been vacant as at some months ago, although more had been let recently, it was said. The Lease is for 128 years from 1st January 2016. The Tribunal understands that the Leases of the other Flats are in substantively the same terms. Service charges are apportioned according to square footage.
12. The Property was formerly used as commercial offices but was more recently converted into residential accommodation by the First Respondent, which holds the freehold, including the Flats not the subject of the long Leases. The Tribunal found that conversion work had not, at least in relation to parts outside of the Flats themselves, been completed. It was not clear whether that was because of finance difficulties, a falling out with the building contractor or otherwise. That appears to the Tribunal to remain relevant.
13. It was also relevant then and now that the Curtilage is not all the land on the site. It was established that part of the area laid out as access and parking (“the Other Land”) in relation to which complaints were made by the Applicants, did not now fall within the Respondent’s title at all, as revealed by the plans of that title, and did not fall within the scope of this application and any determinations to be made by the Tribunal. Issues as to parking rights purchased by the Lessees along with the Flats was noted to fall outside of the scope of this application and a potential related issue, with access to the Property, which requires passing over

land not in the title, was mentioned but was not for the Tribunal to determine.

14. There was, at the time of the Applicant's application, a managing agent instructed by the Respondent, which was named as the Second Respondent originally. That management ceased on 3rd May 2021. The Tribunal has removed that agent as a respondent, being no longer a relevant party.
15. The relevant provisions of the Lease were set out in the July 2021 Decision. They are not repeated at length in this Decision. One provision does merit repeating, being clause 5(c), which states as follows:

“Until the grant of leases on sale of the residential flats in the Building remaining unsold at the date hereof have been completed to observe and perform in relation to such flats such of the covenants and conditions corresponding to those contained in the Lease on the part of the Tenant as relate to the payment of service charges thereunder and the repair thereof”.
16. The payments which the Respondent is obliged to make pursuant to that provision were termed in July 2021 “Equivalent Contributions”. That term is retained.
17. The Tribunal determined that it was just and convenient to make an order appointing a Manager for the Property, having seen and heard the evidence and submissions. The detailed reasons are set out in the Decision of the Tribunal dated 22nd July 2021 with the first above- listed case number.
18. Whilst it is not necessary to repeat those at any length, it is useful to record that the principal matters which led the Tribunal to that determination as set out in the Decision were as follows:
 - i) The conversion work had not been completed, causing various problems, including concerns as to fire safety, certain of which Ms Thompson then Counsel for the Respondent said the Respondent specifically intended to deal with;
 - ii) There were other breaches which Counsel had been instructed to admit on behalf of the Respondent in relation to works but where it was said those had subsequently been attended to by the date of the hearing
 - iii) Hence the threshold for an order had been cleared on the Respondent's own case;
 - iv) The management of the Property by the Respondent had suffered from significant failings, not the fault of the managing agent;
 - v) A substantial cause of difficulties had been the failure on the part of the Respondent to make the financial contributions as required in respect of the flats which it retained;

- vi) The question of whether and to what extent issues with the Property related to incomplete conversion work or later matters requiring repair and maintenance required resolving and
- vii) The Tribunal did not consider that the above matters would be attended to if the management of the Property remained with the Respondent but rather required an independent Tribunal-appointed Manager to attend to them.

Recent Applications and developments

19. In Spring of this year, the Tribunal case officer received communication from the Manager with regard to difficulties arranging insurance for the Property, where the Tribunal understood that such insurance expired on 28th June 2023 such that by 30th June 2023 there was no insurance in place. Thankfully, despite the real concern that the Property might not be insured, insurance was able to be obtained and so that issue resolved. A hearing took place because of the Tribunal's concerns which, startlingly, the Manager failed to attend.
20. Communication on behalf of the Applicants at that time highlighted ongoing fire safety issues, that historic contributions to service charge funds by the Respondent remained unpaid and that there were said to be unpaid invoices to contractors. It had also been said that the building insurance would have to be paid for up front but without the funds for that to be done, although that aspect at least was apparently resolved. Mr Farrow, the Manager, also provided a report and a spreadsheet of financial matters. The report described some progress but also matters requiring being dealt with.
21. It was noted then that the Appointment of Manager Order would continue unless and until it may be varied, whether terminating the appointment of Mr Farrow and with management reverting back to the Respondent or with the appointment of an alternative manager, subject to any other arrangement for management or other change superseding those. It was also indicated that if any application was made by any party, the Tribunal would look to list at least the first hearing of that as a matter of urgency and as soon as practicable and that the subsequent steps and any outcome would inevitably depend on the nature of the application made and the appropriate consideration of that by the Tribunal at that time. Nothing more could be done with that at the time.
22. Mr Farrow (the "Old Manager" as termed on the front-sheet and also below where appropriate") applied in October 2023 to be permitted to cease to be the Manager, application number CHI/24UG/LVM/2023/0007. In brief comments, he explained that he would not be engaged in block management as of 1st January 2024 as he is taking up another vocation. It was observed by the Tribunal that was likely to mean that Mr Farrow would not have the ongoing experience or resources, presumably not ongoing insurance cover save

if necessary for this appointment, and not sufficient time. It was further observed to be of some relevance as to whether the Applicant or other lessees were able to identify an alternative Manager who may be suitable for appointment and whether they apply for a variation of the Order, although the ability to appoint an alternative Manager was not the sole consideration.

23. Expressing the view that taking on the role of a Manager is a serious commitment that the Tribunal was entitled to know more and the parties were entitled to object if they wished, a hearing was listed. Mr Farrow was directed to attend and to provide a bundle of documents as to the financial position.
24. On 7th November 2023, the Applicants, through their representative, applied for an order varying the appointment of the Manager by way of appointment of an alternative manager, Mr Michael Jacobs (the “New Manager” as termed on the front- sheet and where appropriate below). That was given number CHI/24UG/LVM/2023/0008. The application included seeking an extension of the term of the current Order, due to end in just over 7 months’ time, for a further 3 years. The proposed new manager was directed to attend and to provide further information. It was identified that the form of Appointment of Manager Order was likely to be updated if relevant, to accord with the current form of Order used.
25. An ancillary application that the costs of the proceedings are not to be recoverable as service charges was made subsequently, given number CHI/24UG/LLC/2023/0004.
26. Reference was also made by the Applicant to seeking recovery of service charges. The Tribunal queried that.
27. The Applicants subsequently made an application for a determination of the payability and reasonableness of service charges, dated 8th November 2023 and which had been given application number CHI/24UG/LSC/2023/0133. The Tribunal had not been able to take any action in respect of that by the time of the hearing of the other applications, but it was mentioned in the hearing- see below.

The Law

28. The applicable law in respect of variation (or discharge) of an order appointing a Manager may be very briefly stated.
29. Pursuant to section 24(9) of the 1987 Act, the Tribunal:

“may on the application of any interested person vary or discharge [a Management Order].....

30. s24(9A) provides that:

The [Tribunal] shall not vary or discharge an order unless it is satisfied:

(i) that the variation or discharge will not result in a recurrence of the circumstances which led to the order being made and
(ii) that it is just and convenient in all the circumstances of the case to vary or discharge the order.”

31. The power to vary includes the power to extend the term of the Order. The Applicants case referred to *Orchard Court Residents Assoc v St Anthony's Homes Ltd* [2003] EWCA Civ 1049, which the Tribunal does not consider it necessary to quote from or say any more about, the principle being long- established and not contentious.

32. In addition, as contended in the Applicant's Skeleton Argument and orally, the Tribunal has powers in respect of a Manager, including after the end of an appointment, and those include the provision of a final account, of other accounts information and of documents. The Tribunal accepts that the Upper Tribunal decision of *Kol v Bowring* [2015] UKUT 530 (LC), which was quoted from at some length, applies. The Tribunal returns to that below.

The Hearing

33. The hearing was conducted as video proceedings. Two members of the Tribunal sat at Havant Justice Centre, but all other participants attended remotely.

34. The Applicants and Respondent were represented by Ms Kuehl and Ms Edmonds of Counsel respectively. Mr Farrow was also represented, by Mr Cain of Counsel. Solicitors for the Applicants and Respondent, various of the Applicants and Mr Jacobs were also in attendance. There was no attendance from anyone from the Respondent itself. The Tribunal expresses its gratitude to Counsel and all those who assisted with preparation and instructions.

35. There was no single bundle, the applications having been made separately and additional information provided having been provided subsequently. However, there was a bundle of 138 pages including the Applicant's application and various other relevant documents, including in relation to the then- proposed New Manager. In addition, there was a bundle of financial and other documents provided by Mr Farrow and there were some additional documents from Mr Jacobs pursuant to the most immediate- preceding Directions. Whilst each set of documents provided as a PDF contained PDF page numbering and the Applicants' bundle contained matching pagination of pages, the Tribunal considers it unnecessary to refer to specific page numbers and in particular that reference to PDF page numbering may cause confusion as between the different sets of papers.

36. Given the matters covered in oral submissions and evidence and the matters which were not in dispute, the Tribunal finds it necessary to refer only to a very little of the contents of those bundles and other documents. The Tribunal makes clear that it has read both the three sets of documents referred to above and the other documents which were sent to the Tribunal from Mr Farrow's application onward. Failure to refer below to any given document or part of a document should not be equated with a failure to have read and considered it or a failure to take it into account insofar as necessary in order to reach the determinations made.
37. The Tribunal sets out below the matters addressed at the hearing, taking each in turn, and the determinations made.

Appointment of the New Manager and end of the appointment of the Old Manager

38. It was established at the outset of the hearing that the Respondent did not oppose either the application of Mr. Farrow to be relieved of the position of Manager or the appointment of Mr. Jacobs as the New Manager. It was also accepted that there was no requirement for a fresh section 22 notice to be served, which the Tribunal considered was unquestionably correct, the issue between the parties essentially relating to the question of whether there should be an extension of time of the management order beyond the current end date of June 2024.
39. The Tribunal identified to the parties that nevertheless the appointment of Mr. Jacobs as the New Manager was subject to the Tribunal being satisfied that he was suitable for such an appointment. It was necessary to hear further from Mr. Jacobs in order to reach that determination.

Evidence of Mr Jacobs

40. It should be recorded that there had been an initial written statement from Mr Jacobs and a CV. In addition, a more detailed statement was produced in response to the Directions given following the Applicants' application. The Tribunal had carefully considered those. Nevertheless, the Tribunal was mindful of the size of the Property and the nature of the issues and so wished to hear further from Mr Jacobs.
41. It was checked with Mr. Jacobs that he had not been previously appointed as a manager. The Tribunal noted the reference in his statement to assisting. The phrasing of that made it less than clear whether that assistance had been as a Manager, or assisting another person who was the Manager. The answer was the latter and in respect of two properties on separate occasions both some years ago. Mr Jacobs relied on that experience in relation to the difference between

an appointment as a managing agent and an appointment as a Manager by the Tribunal but also answered more specific questions sufficiently.

42. Mr Jacobs was asked about and was able to identify the problems which needed to be addressed, although he had not- understandably where not yet appointed- sought to investigate the history in detail. Those problems included the need to address works required from the development of the Property on the one hand and repairs on the other and parking issues. He stated that he had encountered other properties where issues had arisen with regard to incomplete developments.
43. Mr Jacobs also explained how he intended that management of the Property would be carried out. In essence, a property- manager from the company of which Mr Jacobs is a director would undertake day- day tasks whilst Mr Jacobs, assisted by another senior manager as appropriate, would deal with the “high- level” issues. That in part was relevant to a query of the Tribunal about the distance from Mr Jacobs’ office to the Property. The property- manager was explained to manage other properties in Hampshire. In response to further clarification sought by the Tribunal, Mr Jacobs explained that he envisaged an agreement being entered into between himself as Manager and the limited company.
44. In terms of pricing. The Tribunal identified that the yearly fee quoted was the basic fee for the work of the property- manager to whom day- to- day tasks were to be delegated and related staff but with an element of the time of Mr Jacobs where required in relation to such work, whereas the hourly rates would apply to the “high- level” tasks undertaken by Mr Jacobs or otherwise at a senior level.
45. It necessarily follows, as Mr Jacobs accepted, that the actual fee for management of the Property will not be £26,750 plus VAT and is not a known figure but rather will be that basic fee plus whatever additional work in reasonably required at the high level to address the other issues requiring resolving. Mr Jacobs did explain that he would consider whether it would be cost-effective to address any given issue in light to the amount involved and the work required.
46. The Tribunal accepted all of that as reasonable. It is nevertheless important that the lessees and the Respondent understand it. Leaving aside the fees themselves, it may be that some of the issues which are identifiable will not be addressed by the New Manager, in the event that the costs of seeking to resolve them outweigh the likely gain. Whilst any issues with, for example only, the Respondent’s responsibility for an element of the Property being left unresolved is less than ideal, equally spending more on an attempt to address them than would be paid to deal with the required works arguably makes little sense. An element of realism which a Manager can bring and the

lessees might, for understandable reasons, not do is an advantage of an appointment.

47. At that point, no additional fee was to be charged for work in relation to the handover, Mr Jacobs explained in response to a question from the Tribunal. That position subsequently changed, as explained further below.
48. Mr Jacobs was keen to stress his desire to ensure clarity and transparency.
49. Having heard from Mr Jacobs, the Tribunal took time to consider whether it was content to appoint him as the Manager. The Tribunal determined that it is, subject to Mr Jacobs being able to ensure that he could obtain personal professional indemnity cover for his appointment as the Manager from the insurer for the company (or otherwise) and ensure the appointment and that cover be noted on the company's policy.
50. The Tribunal need not repeat any matters about the Property and the issues. The Tribunal has sought to provide any appropriate powers to address those in the Management Order, without knowing precisely what may arise and whether any other provisions may in due course prove relevant. The Tribunal expresses the sincere hope that the New Manager will be able to provide effective management of the Property and make progress with resolving the issues which exist.
51. It follows that the Tribunal accepts the resignation of Mr Farrow as Manager, as from the date on which Mr Jacobs will commence as the New Manager.
52. Notwithstanding the concerns held by the Applicants- and without making any determination as to the merits or otherwise of any of those- the Tribunal finds it appropriate to express its gratitude to Mr Farrow for taking on the role of Manager for what was plainly a difficult property to manage and for the efforts he has made in the intervening period.
53. Ms Kuehl's Skeleton Argument had sought that Mr Farrow would not be "fully discharged" until accounting issues asserted by the Applicants had been attended to. However, it was established that what was meant was that he should retain obligations. The Applicants were anxious that the Old Manager would continue to have obligations.
54. A Tribunal- appointed Manager does continue to have obligations by the nature of the appointment. Those are provided for in Directions and below and in the Management Order where it is appropriate for those over and above the generality of obligations continuing.

55. There was some discussion as to the start date for the appointment of Mr Jacobs. A period of one week after the hearing was proposed by Ms Kuehl and not objected to. The basis was to enable insurance to be addressed in the meantime. Ms Kuehl mentioned that it may be necessary to apply urgently if the insurance cannot be resolved in time, which the Tribunal accepts, although hopes can be avoided.
56. The Tribunal then turned to the other issues to be dealt with, as identified below.

Extension of the term of the Appointment of Manager Order

57. The principal dispute as between the Applicants and the Respondent lay in the question of whether the term of the Appointment of Manager Order should or should not be extended. The Applicants sought as part of their application for a variation of the Order to provide for the appointment of Mr Jacobs, that the Order also be extended for an additional three years from June 2024 to June 2027.
58. Ms Kuehl argued that the original Management Order could have been for any length of time, which is correct, although the practice of the Tribunal is to limit the period of an order to the period considered likely to be required to address the issues which lead to the making of the Order and to enable any alternative arrangements to be put in place.
59. Ms Kuehl also emphasised the serious issues which the Tribunal had found to exist, most of which she asserted had not been resolved. Mr Farrow's suggestion in correspondence that completion of the works may cost in the region of £500,000 was cited. Ms Kuehl suggested that the New Manager could not be expected to sort those out in the seven months remaining. She also contended that any managing agent which might be instructed by the Respondent if the Management Order ceased would be likely to experience the same problems encountered by the previous agent with lacking any ability to pursue the freeholder/developer.
60. As Ms Edmonds rightly observed, that application was made only a handful of days prior to the hearing and so there had been very little time for the Respondent to respond to it, particularly by putting in any evidence. She asserted that there were disputes as to facts, for example the Respondent contended that the development works were complete. Ms Edmonds referred to the July 2021 Decision stating, for example, that fire safety works were complete. An application to extend, Ms Edmonds argued, should be attended to separately by the parties at a later time prior to the end of the existing term and in a more considered manner. The historic issues were the reason for the 2021 Order and not necessarily a reason for an extension of the term, still less at this time.

61. It was also argued that there was time within the current term for Mr Jacobs to “get stuck in” and for the parties to see how that went. Ms Edmonds added that there may be an impact on the value of the Respondent’s property.
62. On a somewhat separate note, but raised in the course of Ms Edmonds’ submissions and convenient to deal with here, it was said that the Respondent considered that the payments made by it as Equivalent Contributions plus the ground rent which the Old Manager had been entitled to collect and apply to the Respondent’s account had exceeded the Equivalent Contributions payable by the Respondent since the 2021 Management Order. The Tribunal makes no finding about that, lacking the information on which to do so, but expects the answer will become clear when the Old Manager fully clarifies financial matters as directed in this Decision and the new Management Order.
63. The Tribunal notes that it was not suggested that the Respondent had attended to contributions payable prior to the Management Order, although Ms Edmonds instructions were that it had been agreed that the cost of repair works could be offset against such historic non-payments. There was no evidence of such an agreement or of works being undertaken which were repair works as opposed to development requiring completion.
64. Ms Kuehl submitted that the Respondent’s position essentially amounted to seeking an adjournment of that aspect of the Applicant’s application and noted that a further hearing would result in additional costs to the parties. She doubted that work had been completed by the Respondent and noted the level of mis- management the Tribunal had previously found. Ms Kuehl also noted Mr Farrow had referred to there being a number of County Court judgments against the Respondent.
65. The Tribunal noted that Mr Farrow’s application had been made somewhat earlier and it was at least no surprise that the Applicants had sought the appointment of the New Manager (or at least a new manager). Neither was it wholly surprising that was accompanied by a request for an extension of the term.
66. However, the Tribunal accepted that there was power in Ms Edmonds submission and that an extension was by its nature a significant interference with the property rights of the Respondent and consequently something which the Respondent was reasonably entitled to be given a reasonable time in which to prepare any case it wished to run about that. The granting of a long extension on only a few days’ notice would invite challenge and that would have a good prospect of success with an appellate tribunal holding that the Tribunal had not proceeded appropriately. Indeed, the Tribunal considers that such a challenge ought to succeed- the Tribunal itself would not have regarded

such a grant an appropriate approach and hence was not one which the Tribunal was prepared to take.

67. After some further discussion, Ms Edmonds informed the Tribunal that the Respondent would not oppose the extension of the Order for a period taking matters to one year from the appointment of Mr Jacobs, so October (perhaps more accurately November) 2024. It would not accept one year from the end of the current term of the Order.
68. The Tribunal noted that the New Manager would not receive a year in which to make actual progress, the first portion of the period being required to obtain the relevant information and establish the position. In response, Ms Edmonds said that the Respondent was prepared to accept an extension of the term until the end of March 2025 (so approximately sixteen months hence and an extra nine months from the end of the existing term). The Tribunal determined that it would accept such an extension if the parties were in agreement to it. Ms Kuehl was instructed to accept that period, albeit with reluctance.
69. The Tribunal did also check that Mr Jacobs was content with the initial term of his appointment. One matter which arose was that Mr Jacobs stated that he had agreed to be appointed as Manager and set the fees on the basis of a term of three years following the end of the current term, that is to say on the basis of the extension of the term recently applied for by the Applicants being granted. Such extension was scarcely guaranteed even if the Tribunal had held a full hearing to consider in detail that matter and then reached a determination. The Tribunal is not party to any communications which may have passed between the Applicants and Mr Jacobs in that regard and has no other information as to the basis on which Mr Jacobs may have expected such an extension and hence says no more about the particular point.
70. Mr Jacobs considered the time to be short given the substantial issues. The more immediately relevant issue was that Mr Jacobs stated that he had not provided for fees for the handover and related work or several other things, having taken the view that could be absorbed into fees intended over the term he envisaged. He was not willing to absorb that work into the wider fees where the term of his appointment may only be until March 2025, dependent of course on any application and the outcome of it as to that. Mr Jacobs sought an additional fee of £25 per flat, therefore £2675.00 overall plus VAT, (so £3210.00 total).
71. Ms Edmonds did not have specific instructions and the Tribunal is mindful that part of the sum will be borne by the Respondent but noted that additional fee was probably less than the costs which would be incurred for another hearing. Ms Kuehl agreed that the cost would be lower, even taking account of the additional fees for the New Manager, and she obtained instructions to agree that.

72. The Tribunal considers that the additional fee is reasonable in all the circumstances and that nothing else which might have been likely to be said could have altered that. The Tribunal observes that plainly another hearing in the New Year, as required in the absence of agreement, would have involved significant further costs if the parties were represented, as they were not compelled to be but may have chosen to be, although a further hearing may or may not yet be required before March 2025, dependent upon any number of potential developments in the interim.
73. The Tribunal has therefore provided for an initial fee of that level to be collectable by the New Manager as service charges from the lessees and Equivalent Contributions from the Respondent in the Management Order.
74. The Tribunal considers that the agreed extension should give time for the New Manager to obtain and consider the available financial and other management documents and get to grips with those and then one year, or thereabouts, to attend to the management of the Property. That need not of course be the end of the Order if an application to extend the time is considered appropriate and is granted by the Tribunal—much as plainly the answer to that cannot be known at this time, as explained above.
75. The approach taken by the Tribunal is not to detract from the doubt the Tribunal holds that the development works have in fact been completed. There was nothing before it to suggest significant change since mid- 2021, whereas the Tribunal found development works to be outstanding at that time. The Tribunal seeks to make no finding, having heard no evidence as to any further works said to have been undertaken by the Respondent and so being in no position to do so, but observes that should it be relevant in due course, the Tribunal is likely to require clear evidence as to what further work has been undertaken by the Respondent and when, with invoices and other supporting evidence, before it found that additional work had been undertaken.
76. For the avoidance of doubt, the Tribunal makes no finding as to whether there are or are not County Court judgments against the Respondent. The Tribunal notes that the value of the freehold is modest but that the value of the forty-one flats retained by the Respondent if sold on the usual long leases (and provided the Property as a whole is such that the flats were saleable) would be very substantial. As to how that may compare with the amount of any mortgage or other charge on the Property or the amount which may otherwise be owed by the Respondent is wholly unknown to the Tribunal and requires no determination at this time.
77. The Tribunal pauses briefly to note that the reference to forty- one flats being retained by the Respondent is made on the footing that Ms

Edmonds instructions were correct in that regard. The Tribunal notes that the number was said to be forty- six at time of the 2021 Order. Notwithstanding any issues that there may be- about which no finding is made one way or the other- the Tribunal does not regard it as implausible that there have been five sales in the intervening period. Whilst the parties may well differ as to the appropriate application of any sale proceeds, that was not the subject of submissions and falls outside of anything directly relevant to this Decision.

78. Accordingly, and on the basis of the agreement between the parties- and without making any findings of fact or any other determination, the Tribunal extends the term of the Management Order to 31st March 2025. The Tribunal determines such an extension to be just and convenient, accepting the question to be one of whether a further term was just and convenient and not whether the Order otherwise ending was.

Form of Management Order

79. The Tribunal explained that it proposed to make an Order in the new form of Appointment of Manager Order now used. No party objected.
80. The Respondent wished provision to be made for ground rent accounts and for the Tribunal to remove words previously used in respect of works “as this has not taken place” contained in paragraph 23 of the existing Management Order. The Applicant had no objection.
81. The Applicants were anxious for the Tribunal to make Orders/ Directions reflecting paragraphs 15 to 21 of the Applicant’s draft order and some form of words akin to paragraph 23 (the provisions proposed are not quoted here).
82. The Tribunal considers that draft caused some confusion to the extent that reference was made to the wording used within it, which in part was not the wording of or based on the wording of the 17th June 2021 Management Order. Equally, where it was used in that 2021 Order but is not the same as that used in the Tribunal’s current precedent form of Management Order. It does not fit especially well with the current form of wording.
83. In the event, the Tribunal provided a form of Order addressing the above as considered appropriate (and indeed the matters below as appropriate) to the parties for comments. That approach was taken with particular regard to the desire to ensure that matters the parties considered needed to be addressed had been addressed, albeit not necessarily in the same words, and also because of a lack of clarity on the Tribunal’s behalf as to what the Applicant’s and the New Manager proposed with regard to the fees of the New Manager beyond the basic fee. A description in evidence of “high level tasks” was one thing:

appropriate authority to incur fees as expressed in an Order was another.

84. The Respondent sought very minor amendments to provide further clarity with regard to collection of ground rent by the Old Manager. The Tribunal was content those should be uncontroversial and to make those amendments.
85. The Applicants sought amendment of a handful of clauses, including with regard to the New Manager's fees in order to clarify charges which could be made at the hourly rate. The Tribunal was content that the additions about those rates were appropriate and so to adopt them. No other party sought to come back on them. The additional fee for the handover is, however, included in the principal Remuneration clauses rather than the Schedule. So too, with slight amendment, an addition in the event of a shortfall in funds to meet insurance premium payments.
86. The first provisions sought by the Applicants and not adopted are one that the New Manager should be able to take action "against any party responsible for completing the original development and for the avoidance of doubt the New Manager is empowered to bring any such action against any such party" and a related further small amendment. The Tribunal considers that goes beyond the terms of the 2021 Management Order, the amendments previously sought by the Applicants and matters addressed in the hearing and relates to potential parties which are not the subject of these proceedings and of which the Tribunal has been told nothing.
87. Whilst it is open to a party to seek a variation of the Order in due course to address that, providing to the Tribunal any relevant information, the Tribunal does not consider that it falls within the ambit of the representations which the parties were permitted to make about the draft order or is otherwise a matter which the Tribunal should provide for at this time.
88. The next matter not adopted is an amendment to the number of flats held by the Respondent. The draft originally produced had stated a number for flats leased and flats retained. The Tribunal has concluded that is not necessary. The numbers have not previously been in dispute. The Applicants sought to add two to the number retained by the Respondent in relation to the two flats noted in the Decision in 2021 to be under construction.
89. It was not suggested at that time that the two flats in construction should be treated as flats for which the Respondent should pay Equivalent Contributions. The Tribunal made no determination as to whether it should. The point was not mentioned in the recent hearing.
90. The Tribunal has no information as to the extent of the construction which has by now been undertaken, including notably whether it has

moved on from the position in 2021. The Tribunal has no other information on which it might determine whether the two should now be treated as flats for the purpose of Equivalent Contributions and has neither sought nor received any representations.

91. The New Manager will need to consider whether the two should properly be treated as flats for the purpose of the payment of Equivalent Contributions. The Tribunal leaves open the question of whether it may be appropriate for the New Manager to apply to the Tribunal for a direction about whether he is able to demand Equivalent Contributions if he is unable to decide or he seeks to so demand and an issue arises.

The provision of financial information by the Old Manager, concerns expressed by the Applicants in respect of service charges and other matters related to the handover

92. Firstly under this heading, it merits recording that the Applicants no longer pursued any order against Farrow and Lynas Limited, the company of which the Old Manager was a director. The Tribunal considered that sensible, having doubted that such an order could be appropriate.
93. The Applicants also did not continue to seek anything in respect of insurance for the Property other than that Mr Farrow assist in the transfer of the policy into the name of the New Manager Mr Jacobs. Mr Cain informed the Tribunal that Mr Farrow was willing to do that and a date of 7th December 2023 was agreed for that to be attended to. He added that insurance was in place, in the name of Mr Farrow rather than the Respondent, and that Mr Farrow would communicate with Mr Jacobs in respect of amendment. That is entirely sensible.
94. The matters which the Applicants sought through Ms Kuehl for the Tribunal to address therefore related to accounting matters related to the service charges demanded and documentation, although the Tribunal considered, whilst noting the Applicants' concerns, that their hopes were not in line with usual expectations.
95. There were, the Tribunal considered, three separate elements. The first was the extent to which the Old Manager should be directed to provide information documents with regard to service charges and other accounting matters. In principle that did not appear in advance to the Tribunal to be problematic, although it is referred to further below. The second was what ought to happen in the event that any accounting issues were identified. The third was the payability and reasonableness of service charges demanded, which the Tribunal could plainly determine under its usual jurisdiction in respect of such matters but which was entirely separate to the second element. However, the

Tribunal considers that there was some confusion in the hearing between the first and second elements.

96. In *Kol*, on which the Applicants relied, the Upper Tribunal had explained that the Tribunal is given wide powers, explained that the Manager remains accountable to the Tribunal even after his appointment ends and stated that there should be a timetable in which the lessees can seek further information or raise queries, which indeed the 17th June 2021 Management Order provided for.
97. The Tribunal determined it entirely appropriate to direct that Mr Farrow produce final accounts, the financial history and the relevant vouchers.
98. There was no opposition to that from Counsel on behalf of either the Old Manager or the Respondent and that is unsurprising. Such direction ought not to be contentious.
99. The timescale was discussed. Mr Cain invited a period of 42 days but given that would fall between Christmas and New Year and had been suggested by Mr Cain taking a cautious approach where he expected 21 days to be sufficient, the Tribunal determined the appropriate period to be thirty- five days, such that provision is required by 5pm on 21st December 2023.
100. The specific wording to provide for that was left to be agreed between Counsel, which agreement was reached, with agreed draft wording being provided to the Tribunal the day after the hearing. The Tribunal has utilised that.
101. There was discussion as to the best method for providing for the above. Ms Kuehl expressed concern that a requirement for Mr Farrow to use his best endeavours by a given date, where speed was important, was different to requiring him to definitely do something by that date or a later date. The Applicants no longer specifically sought that accounts were certified, which the Tribunal notes had not been required by the Management Order. Mr Cain explained that the requirement for an audit was of concern to Mr Farrow in terms of timescale as likely to take considerably longer.
102. The manner of dealing with the third element, payability and reasonableness, is separately addressed below.
103. The second element, that the Tribunal was apparently being asked to order that the Applicant be entitled to recovery of service charges from the Old Manager (and/or as made Farrow and Lynas), was the problematic one. It may be said that the Applicants' position was less than clear because the application to vary said that the Applicants were making a separate and complimentary application, although the

application made was for determination of payability and reasonableness, quite a different thing.

104. The Applicants sought, the Tribunal understands, to rely on the observation of HHJ Gerald in *Kol* that

“in the event that such response was unsatisfactory for the relevant tenants to apply to the F-tT in respect of any matters they disputed. That application could take the form of a challenge to the reasonableness of the amounts claimed in the sense made under section 19 of the Landlord and Tenant Act 1985 or in relation to the application or mis-application of monies received or any other matters pertaining to the discharge by the manager or receiver of his or her functions as the tribunal appointed manager or receiver, irrespective of whether or not such challenges fell strictly or within the provisions of section 20C or otherwise”.

105. The Applicants do not, the Tribunal considers, have any real idea whether there may be any basis for the sort of order they seek nor to what extent. The Directions sought by the Applicants all related to the first element. So too did the majority of Ms Kuehl’s submissions. Whilst the Applicants can currently say that they are not content with the financial information and documentation provided, the implication that money may have gone astray is based on nothing other than speculation.

106. It was further submitted by Ms Kuehl that “someone needs to consider what the Manager spent the money on”. That may or may not be correct in the sense of anyone other than the Applicants. Once Mr Farrow has provided the accounts and documents directed, no doubt that can all be considered. It is to be hoped that no or negligible- only issues remain. If not and the Applicant’s wish to have a management audit undertaken or otherwise to instruct a third party to consider the documents, that will be a matter for them at that point. That may then result in there being no or negligible- only issues, or there may not. That cannot be known.

107. It may or may not be that the Applicants later seek any sort of order of the nature sought in the application for variation of the Management Order. Ms Kuehl indicated acceptance that the question of whether money received by the Old Manager had been properly spent may require a further application, as the Tribunal considers it does. The Tribunal does not consider that such an order can properly form part of the application to vary an order appointing a Manager. It has nothing directly to do with the variation sought, which is based on Mr Farrow wishing to cease to be the Manager and an alternative Manager being appointed and is separate to handover of documents and information.

108. The Tribunal identifies the comments made by the Upper Tribunal in *Kol* as to the applications which may be made as obiter but, in any event, they refer to matters being determined by the Tribunal and not

directly the question of whether the Tribunal may make any specific order for recovery of any service charges paid in favour of any party from the Manager. The Tribunal prefers not to make any observation as to whether the powers that the Tribunal has in respect of Managers appointed by it on application would otherwise extend to the making of the sort of order that the Applicants seek in the absence of further submissions and consideration.

109. In the event that the Applicants seek to pursue any further matters against the Old Manager and can demonstrate that the Tribunal is the appropriate forum for that, the Tribunal can address any such application at the relevant time.
110. For current purposes, the Tribunal considers that the particular part of the application cannot properly succeed. For that reason, it is dismissed, but without precluding a further application should that indeed be appropriate in due course. The hearing for further directions to be given sought in the Applicants' application is not relevant.
111. The Directions given for provision of documents and information by the Old Manager are firmly in relation to the first element and nothing in respect of the second element should be read into them.
112. Finally under this heading, the Tribunal notes that within the Applicants' application and Ms Kuehl's Skeleton Argument, it was asserted that services to the Property are suspended because of insufficient funds and also in the application that the service charge bank account has been closed. There was no indication those are accepted by the Old Manager, equally no party raised the matters further at the hearing seeking any explanation or that the Tribunal make any finding. The Tribunal does not do so. Such finding were not necessary for the purpose of determining any of the applications required to be determined and the Tribunal anticipates that the New Manager will be able to seek such confirmation from the Old Manager as he may require and in any event attend to any such matters following his start date in the manner he considers appropriate.

Additional communications since the hearing

113. Whilst this is an imperfect point at which to insert reference to additional comments made in the context of the situation facing the New Manager, there is no obviously better place and so the Tribunal addresses them now. There is a connection with the terms of the Order, which merits explaining.
114. The Tribunal is mindful that it will be addressing matters which arose after the hearing, although before the finalising of the Order, and that it has not invited comments from the other parties on the matters mentioned below as stated by the Old Manager and the New Manager,

although the Tribunal notes that the parties representatives and some of the Applicants were copied in and so the Tribunal is confident that there would have been communication on behalf of the parties if it was considered anything needed to be said.

115. The New Manager identified in a email dated 30th November 2023 that insurance cover for the Property was by then held in his name. That was an obvious positive. He indicated an understanding of arrears of £11,000.00 against payments due on the policy and that an initial payment of £30.00 per flat would not even cover one month of premiums. The £30.00 was intended to meet the additional fee for the handover and not any other sums- no other initial payment had been requested in any documents or in the hearing.
116. The New Manager explained his plan to start preparation of the new budget, due on 1st January 2024 and to seek funds, also demanding payments for the insurance as additional rent, to enable funds to be available in January 2024. It does not appear to the Tribunal that there is a need for it to comment on those matters, which are very much about the management of the Property and so matters for the New Manager (absent anything on which the Tribunal is specifically asked to issue any Directions and insofar as suitable for such Directions).
117. The Old Manager responded by email the same day stating that he was “speaking with” the insurers as there ought not to be any arrears. He was to provide confirmation of the account being up to date “in the coming days”. The Tribunal trusts that the Old Manager can resolve any issues with the insurer of the Property and that no difficulty does arise with arrears of premiums. There is nothing else to immediately say about that.
118. In the event that the New Manager considers the need in due course to have the power to raise any ad hoc services charges, and assuming that the Leases do not provide for that, he may apply for a variation of the Order or other specific one- off power. For the avoidance of doubt, paragraph 30 of the Order (on page 8 of it) facilitates the demand for the additional sums of £30.00 referred to above and does not intend to remove any ability there may be under the Leases to make any ad hoc demand for any other sum.

Section 20 C application

119. The Respondent opposed the making of an order pursuant to section 20C in response to the application for that. However, it was said by Ms Edmonds that the Respondent recognised that it had no ability to recover any costs of the proceedings against the Applicants. In effect, the order was therefore unnecessary.

120. In the event, there was no need for the Tribunal to determine the issue because the Applicants Counsel, Ms Kuehl, informed the Tribunal that the applicants were no longer pursuing the application.

Section 27A application in respect of service charges

121. As mentioned above, the Applicants had made an application in respect of the payability and reasonableness of the service charges rendered by the Old Manager, as well as for earlier years. However, it was not apparent that they had identified any specific issue with such charges from the Old Manager, which the Tribunal perceived they had paid each year. At first blush, the concerns with regard to the Old Manager were more obviously accounting ones, which the section 27A application would not resolve (if indeed there are any to resolve).
122. The Tribunal noted that there may be matters which the Applicants wish to pursue upon receipt of the financial information sought, or it may be that the applicants are then satisfied with the payability and reasonableness of the service charges which were demanded and that their issue, if any, with the Old Manager lies elsewhere. For the avoidance of doubt, that is by no means to suggest the Tribunal considers that there may be any issues with the Old Manager. The Tribunal adopts an entirely neutral position in the absence of information on which any conclusion could properly be reached.
123. The Tribunal accepts that the application includes years pre-dating the appointment of the Old Manager, the years listed being 2018 to 2023 inclusive, although only the Old Manager (and the company of which he is a director but which is a separate legal entity and has not been appointed as Manager) is named as respondent to that application. The Respondent is mentioned as the landlord but in no other capacity on the application form but would appear to be the relevant respondent in respect of any period prior to 17th June 2021.
124. The Tribunal could not identify any merit in the application proceeding against the Old Manager at the present time. Any Directions which might be given would involve parties in spending time, and if they so chose also costs (that of course that would be matter for them), in relation to an application which may or may not appropriately need to proceed. The Tribunal noted that when the Applicants received the financial information sought by them, the Applicants would be able to fully consider the service charges and may or may not then wish to proceed further. Only if at that stage it was identifiable that there was a challenge too the reasonableness, or perhaps payability, of service charges which rendered an application proceeding appropriate, , would the Applicants be able to identify to the Tribunal any matters in respect of which a determination was required and would the Tribunal be able to consider the appropriate directions to enable that application to be determined.

125. The Tribunal proposed the staying of the section 27A application. The Applicants through Ms Kuehl confirmed agreement to that course.
126. The application is stayed until 29th February 2024. Within seven days after that, the Applicants must write to the Tribunal identifying the matters which the Applicants still wish the Tribunal to determine, if any. Appropriate Directions can then be issued.

Right to Appeal

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal to deal with it more efficiently.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.