



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

**Case reference** : **BIR/00FN/LAM/2023/0002**

**Properties** : **Stoughton Court, 24 Stoneygate Road,  
Leicester LE2 2AD**

**Applicants** : **Mr Andrew Willis (1)  
Ms Claire Simmons (2)**

**Representative** : **Mr Andrew Willis**

**Respondents** : **The Respondents listed in the appendix  
to this decision**

**Representative** : **Frisby & Small, Solicitors (for the  
leaseholder of flat 8 only)**

**Type of application** : **Application by a Tenant for the variation  
of an order appointing a manager under  
Section 24(9) of the Landlord and Tenant  
Act 1987**

**Tribunal members** : **Judge C Goodall  
Mr G Freckelton FRICS**

**Date and place of  
hearing** : **4 & 5 December 2023**

**Date of decision** : **21 December 2023**

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**DECISION ON TERMS OF A MANAGEMENT ORDER AND  
REASONS FOR THE DECISION DATED 7 DECEMBER 2023**

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## **Background**

1. On 7 October 2020, this Tribunal made an order (“the Order”) appointing Ms Lyndsey Cannon-Leach (“the Current Manager”) to be the tribunal appointed manager of Stoughton Court, 24 Stoneygate Road, Leicester LE2 2AD (“the Property”) from that date for a period of three years.
2. On 6 March 2023, the Applicants applied for a variation of the Order (“the Application”). They seek the appointment of an alternative manager, Mrs Alison Mooney (“the New Manager”), the extension of the Order for a further period of time, and certain variations to the terms of the Order.
3. On 7 December 2023, the Tribunal issued a decision on the Application, appointing the New Manager to be the manager of the Property in place of the Current Manager as from 1 January 2024, and extending the period of the appointment of a manager to 31 December 2028. We also indicated that we would vary the terms of appointment, the variations to be determined in this decision.
4. The decision was made following a hearing at Nottingham Magistrates Court over two days on 4 & 5 December 2023. The hearing was attended in person by Mr Willis, the first Applicant and Mr Billen, the First Respondent. No other lessee attended. The Current Manager and the New Manager attended the hearing on the second day (5 December), by video link and in person respectively.
5. In this document, we set out the reasons for making those two decisions and determine what the terms of the extended appointment should be. We also issue the new order itself (“the Order”) dated of even date with these reasons.

## **The 2020 order**

6. Our 2020 order and the reasons for making it are set out in the decision dated 7 October 2020 under references BIR/00FN/LAM/2020/0001 and BIR/00FN/LLC/2020/0002. We do not repeat in full what we said in that decision, but it is necessary to distil our key findings of fact to assist the parties and the New Manager in their understanding of the management challenges at the Property.
7. A short summary of the situation at the Property is required. It is a substantial stone built dwelling, constructed around the turn of the twentieth century, which has a basement and contained four (now five) self-contained flats. Abutting to it is an adjoining purpose built block of an additional six flats.
8. The Property was redeveloped in the 1980’s at which point nine new 125 year residential leases were created. Flat 3 was not let. The leases were

tripartite leases, by which we mean that the freeholder granted the lease to the leaseholder and a third party management company (called Stoughton Court Management (Leicester) Ltd (“SCML”) was a further party which took on the obligation to manage repair and maintain the Property in return for the payment of a service charge by the lessees.

9. A lease of the common parts was granted to SCML on 14 November 1980 for a term of 125 years from 24 June 1980. The demise was of all the land shown edged green on the plan of that lease, which includes the common parts (including the walls, foundations, roof and basement), the grounds, and in particular includes the five garages at the rear of the Property (except in so far as they are included in the demise to any flat owner). SCML covenanted to repair and maintain the Property in return for payment of a service charge. The freeholder has no maintenance obligations.
10. The lease to SCML, however, contains a covenant by the freeholder (clause 4(6)) to pay the service charge attributable to any flats which are unlet. This means that it was intended that the freeholder must pay the service charge attributable to Flat 3. That Flat was subsequently converted by Mr Billen into two Flats – 3a and 3b.
11. The SCML lease was never registered with the Land Registry. It therefore has the status of an equitable lease only.
12. In 2000, Mr Billen and his wife, who were then the lessees of flat 1, purchased the freehold. They then became the lessors under the SCML lease. We recited at some length a history of the period from that time to 2019 in the 2020 decision.
13. Our key findings in the 2020 decision were:
  - a. Management of the Property was effectively under the control of Mr Billen from the time he purchased the freehold in 2000;
  - b. Stoughton Court Management (Leicester) Ltd was intended to be a lessee owned management company to which the common parts of the Property were demised, and which covenanted to repair, maintain, and manage the Property, but Mr Billen effectively controlled that company, and he prevented lessees from playing any role in the actual management;
  - c. From the early 2000’s, lessees were concerned that Mr Billen was not ensuring adequate management of the Property. Matters improved for a time, but by 2011, the state of the Property and grounds was unsatisfactory and in breach of the lessee covenants in the SCML lease;
  - d. Attempts by the then managing agent to rectify the problems were obstructed by Mr Billen;

- e. At a Tribunal hearing in September 2011 (to determine whether management should be taken over by a right to manage company), Mr Billen gave misleading evidence to that Tribunal;
  - f. Mr Billen was responsible for failing to ensure that SMCL remained on the register of companies by failing to file accounts and annual returns (which may have been criminal actions);
  - g. The impact of the demise of SCML and that the lease in its favour was never registered has caused detriment to the lessees;
  - h. Management at the time of the 2020 decision was hampered by there being substantial arrears of service charges. Such payments as were made by Mr Billen were only made after enforcement action in some way was taken against him. We found that Mr Billen persistently delayed payment of any service charges demanded from him;
  - i. The actions taken by Mr Billen to arrange for arrears of service charges due from him and others to be written off by the RTM company were flagrant breaches of his duties to act in the best interests of the company to his own advantage, and to the prejudice of other lessees;
  - j. We found that Mr Billen could not be trusted with the running of a management company as he was unlikely to act in its best interests where they conflicted with his own.
14. Consequently, we made the management order requested appointing Ms Cannon-Leach as the manager.

### **The 2021 directions**

15. In July 2021, the Current Manager applied to this tribunal for directions arising from non-cooperation by Mr Billen exhibited by his continued attempts to carry out building works in the basement of the Property to create two flats.
16. On 18 August 2021, this Tribunal issued directions prohibiting further building works in the basement and requiring Mr Billen to clear the car park of all building waste and rubble and give access to the basement to the Current Manager for the purposes of carrying out repairs and for the preparation of a full report.
17. Those directions were endorsed with a penal notice.

### **The progress made by the Current Manager**

18. The Current Manager responded to the Application in writing through the following documents:
- a. A letter dated 18 May 2023;

b. A letter dated 1 December 2023.

19. The letter of 18 May 2023 informed the tribunal that, since before the Current Manager's appointment, the Property has been "impossible to manage effectively or at all". She ascribes this to three reasons. Firstly, that Mr Billen has effective control of the Property through his ownership of Flats 1 & 3, his mother's ownership of Flat 2, and the ownership of other flats by friends and associates of Mr Billen. Secondly, the non-payment of very large amounts of service charges, and thirdly, the on-going building works in the basement which have left the Property in a dangerous state.
20. The letter of 1 December 2023 informed the tribunal that there was £28 in the bank, creditors of in the region of £10,500, and service charge arrears of £115,195.25. The Current Manager also produced a schedule of financial transactions from 20 January to 30 November 2023. It was apparent from the schedule that only Mr & Mrs Gill, Mr & Mrs Malik, and Ms Simmons had paid any service charges during the period.
21. In evidence to the tribunal at the hearing, the Current Manager gave fuller details of the service charge arrears as follows:

Flat	Lessee / owner	Arrears (£)
1	Billen	21,517.77
2	Kaur	19,515.48
3	Billen	28,758.19
4	Willis	4,507.64
7	Malik	2,577.64
8	Boodhoo	17,030.14
9	Simmons	377.64
10	Minhas	11,292.43
11	Dosanjh	11,382.43
12	Gill	4,784.93
	Total	121,744.29

22. Plainly, these sums total more than the arrears figure given in the 1 December letter and they will need to be checked by the Current Manager when giving her records to the New Manager.
23. The Current Manager was not able to tell the Tribunal what proportion of these arrears had accumulated prior to her appointment. The Tribunal noted that accounts prepared for 2021 by the Current Manager showed the service charge arrears at the end of 2020 to be £36,524.55. It appears that a substantial amount of the arrears must relate to charges levied by the Current Manager which have not been collected.
24. The Current Manager said that she had initiated arrears letters and letters before action, as a result of which some lessees had commenced paying arrears on a payment plan, but Mr Billen, Mrs Kaur, and Mr & Mrs Boodhoo had not made any payments to her at all. She was well aware that Mr Billen considered that he had a defence to any claim for service charges, but she did not consider that any such defence was valid.

She had however not checked the timing of invoices to establish whether there might be a defence under section 20B of the Landlord and Tenant Act 1985.

25. We asked the Current Manager to explain why she had never commenced legal action to recover arrears. She explained that she always felt this would be quite challenging litigation.
26. A critical issue that arose when the tribunal made the 2020 order related to the possibility of litigation to vest the SCML Lease in a new company. The Current Manager said she had received legal advice that indicated the prospect of a favourable outcome, but she had not pursued this option due to the reluctance of the majority of lessees to support it.
27. There had been some discussion with Mr Billen about him granting a new lease of the common parts to a management company, but it had not been possible to come to agreement.
28. In the end though, the Current Manager acknowledged that she had made no progress in resolving the fundamental difficulties arising from the status of the SCML lease.
29. We were informed by the Current Manager (only on our enquiry following the matter was raised by Mr Willis) that a legal notice under the Regulatory Reform Order 2005 had been issued to her on 24 October 2023, requiring action by 1 January 2024, in respect of an unsafe fire escape at the rear of the Property. We directed the Current Manager to provide a copy to the tribunal.
30. Mr Willis asked the Current Manager about two further issues that had arisen recently. Firstly, an owner of neighbouring property had complained that tree roots were damaging his property. Secondly, apparently a workman for someone who was using one of the garages had fallen through the roof and been injured in around the third week in November 2023. The Current Manager indicated that she was aware of the workman having fallen through the roof but did not consider it to be a matter for her to deal with as she had not instructed the work to be undertaken. With regard to the tree roots from the adjoining property the Current Manager was aware of various correspondence but to her knowledge no definite action had been taken by the neighbours.

### **Inspection**

31. The tribunal inspected the Property in the morning of 4 December 2023 accompanied by Mr Billen and Mr Willis.
32. We were shocked by the state of the Property. The garages at the rear and the hard standing in front of them are littered with detritus and rubbish. The car park area is extremely uneven with previously open trenches not having been satisfactorily made good; it appears that the direction the tribunal made in 2021 concerning that area has not been complied with.

33. Due to the sloping profile of the site, the basement is at ground level at the rear. A new door and a new window have been fashioned as part of the building works that Mr Billen had commenced to the basement. The lintels did not appear satisfactory. Drainage pipes (including what appears to be a soil pipe) have been damaged. There is a void outside one of the doors that appears to carry a risk of falling. It is evident that there is water ingress on the roof. Gutters have failed causing vegetation to be growing down the walls. Household rubbish has been fly-tipped at the left hand entrance. Window frames are in extremely poor state. An airbrick has been cemented over. The soffits and fascia's are in a poor state of repair.
34. Internally, there is little evidence of a cleaning regime. A number of communal lights do not work. The emergency lights to the stairs and landings of the newer extension incorporate a general lighting system operated by PIR sensors. Although at the time of our inspection the emergency lights appeared to be operating the ordinary lighting bulbs in all the fittings required replacement. In the original part of the house communal lights were on, twenty-four hours a day as the sensors or time clocks were not working.

### **The New Manager**

35. The proposed New Manager is Mrs Alison Mooney. She holds the qualifications of MRIPM and is an Associate of the Royal Institution of Chartered Surveyors. She works for a residential management company called Westbury Residential, in which she is a director and in which she has a small shareholding. Its parent company is Urang Ltd. Westbury has two subsidiaries which also carry out residential management.
36. The New Manager has reasonably extensive experience as a tribunal appointed manager. She listed seven properties where she had been or is still the manager since 2018. There were some appointments occurring before that date. It is clear to the tribunal that she has worked on appointments that have presented challenges, and on a number of her appointments, she has either been re-appointed, or has continued to manage the buildings following the termination of her initial tribunal appointment. This indicates she has a track record of successful appointments.
37. The New Manager made the tribunal aware of one appointment that had been particularly challenging and which she did not regard as a success. In that case, a lessee had applied to the tribunal to discharge her from her appointment. Although the FTT had refused to do so, the lessee had appealed to the Upper Tribunal. That tribunal had levelled some criticism of the New Manager.
38. Westbury Residential are based in London. However, the New Manager lives locally to Leicester so is in a good geographical location to be able to visit the Property and supervise works. She works with a colleague who would become involved in assisting the appointment.

39. We were satisfied that the New Manager had a good relationship with suitably experienced solicitors and counsel, and satisfactory professional indemnity insurance is in place. Confirmation that the insurance covers her for 1987 Act appointments is awaited. There is a satisfactory complaints procedure in place.
40. The New Manager provided a draft action plan. It contained the following elements:
- a. Within the first month, update reports or recommission them;
  - b. Work on creating constructive working relationships with stakeholders;
  - c. Ensure conformity with all health and safety requirements;
  - d. Ensure adequate insurance is in place;
  - e. Deal promptly with routine enquiries and administration;
  - f. Undertake works to ensure the building is up to the required standard.
41. Proposed fees for the New Manager's firm are £400.00 plus VAT per flat per year, with additional fees for non-standard work. In order to ensure the New Manager had adequate funds to commence management, it was proposed by the Applicants that she be authorised to demand immediately upon appointment a sum of £5,000.00 from each flat owner with Mr Billen to pay £10,000.00 because Flat 3 had been converted into two flats. It is not clear whether the demand for this immediate proposed payment is in addition to any reasonable service charge for 2024, or merely to be an on account payment, to be set off against any properly demanded service charges for 2024.

### **The Respondents positions**

42. Mr Billen attended the hearing and had the opportunity to make submissions and to put questions to the proposed New Manager.
43. He had been given the opportunity to provide a written response in directions issued by the tribunal on 11 May 2023. He provided a letter dated 28 May 2023 in response in which he opposed the Application. He felt it was not fair for the Applicants to dictate who should be the manager. That ought to be decided collectively by all Flat owners. He requested time in that letter for a suitable alternative manager to be appointed as agreed by a majority of the Flat owners. This approach was clarified by Mr Billen at the hearing. He felt strongly that the majority of the Flat owners should be able to determine the manager. He made the same representations on behalf of his mother, the lessee of Flat 2. He had not arranged for any alternative managers to be available for appointment by the Tribunal.



44. Mrs Minhas provided a written response on 30 May 2023. She writes in what appears to us to be an exasperated tone, saying she considers that she has been caught up in a chronic and toxic dispute between Mr Willis and Mr Billen. She considers that Mr Willis accused her falsely of not paying her ground rent. She says that she has had no communication with Mr Billen for the last two years and that is not expected to change. She considers that the Current Manager should complete her term, all lessees should pay their service charge arrears to a common level, and an independent right to manage company should take over the care and running of the Property. She rejects the proposal to appoint the New Manager. She has no interest in pursuing any litigation over the common parts.
45. In an email dated 31 May 2023, Mr Crowson of Frisby & Small, Solicitors, wrote to the tribunal to say he was instructed by Mr & Mrs Dosanjh, Mr & Mrs Hussein (Flat 7 – understood by the Tribunal also to be known as Mr & Mrs Malik), and by Mr & Mrs Boodhoo (Flat 8), who all opposed the Application. Mr Crowson had previously advised Mr Billen, but he was not instructed by him in relation to the Application.
46. Mr Crowson later wrote to the tribunal to say that Mr & Mrs Dosanjh and Mr & Mrs Hussein considered the costs of opposing the Application to be disproportionate, and accordingly, they did not intend to make representations or attend the hearing. However, Mr Crowson continued to be instructed by Mr & Mrs Boodhoo.
47. Mr Crowson provided a statement which he signed on behalf of Mr Boodhoo. Mr Boodhoo's analysis of the current situation was that the Application was a step in the battle of personalities between Mr Willis and Mr Billen, and he was essentially being asked to fund the costs of that battle. He disputes that he has any service charge arrears and refers to alleged failures to comply with the "obvious statutory hurdles, such as the 18 month rule". No proceedings have been issued, which he regards as acceptance by the Current Manager that she does not truly believe the arrears are due. He says that he has paid all demands that the Current Manager has made. Mr Boodhoo is of the view that if the New Manager decides to pursue historic service charge arrears, further money would be entirely wasted on the costs of pursuing these, which would be "profoundly unfair" on the lessees.
48. Mr Boodhoo also objects to the taking of any action by the New Manager to seek a vesting order to vest the SCML lease in a new company on the basis that any such vested lease would not bind Mr Billen as it was not registered. Pursuit of a vesting order would therefore serve no purpose.
49. In summary, Mr Boodhoo suggests that the Current Manager should complete the task she took on, that no further action be taken to pursue historic service charge arrears, that it is pointless to seek a vesting order, and the appointment of a new manager now will just waste costs as she will have to start from square one.

50. There is a further objection from Mr Boodhoo to the inclusion of any penal notice attached to any order requiring payment of historic arrears as that would deprive him of a right to a fair trial to determine whether he actually owes any arrears.
51. Shortly before the hearing, Mr Crowson informed the tribunal that he and his client would not attend the hearing.

## **Law**

52. Appointment of a manager under the Act is governed by sections 21 to 24. The procedure when an application is made for the appointment of a manager of a property for the first time is that, following the service of a preliminary notice, the applicant may apply to the Tribunal. The applicant must establish that one of the fault based grounds for making the order set out in section 24 is established. If so, the Tribunal may appoint a manager to carry out in relation to the premises such functions in connection with the management of the premises or such functions of a receiver, or both, as the tribunal thinks fit. The Tribunal may include in the order provision with respect to such matters relating to the exercise of the managers functions and such incidental matters as the Tribunal thinks fit.
53. The Tribunal may also provide in the order for rights and liabilities arising under contracts to which the manager is not a party to become the rights and liabilities of the manager and allowing the manager to prosecute claims in respect of causes of action accruing before or after the date of the appointment (section 24(5) of the Act).
54. On the application of any person interested, the tribunal may vary or discharge the order (section 24(9)).
55. On a variation application, there is no requirement for the tribunal to satisfy itself again that grounds for the making or an order as set out in section 24 are made out at the time of the application to vary the order (*Orchard Court Resident's Assoc v St Anthony's Homes Ltd* [2003] EWCA Civ 1049).
56. The Tribunal has a wide-ranging power to make orders relating to the functions of management of premises which it thinks fit. It is not constrained by the terms of the leases, and indeed, its discretion can be appropriately exercised in order to deal (at least on an interlocutory basis) with defective leases. Orders must be proportionate, but it is legitimate for a Tribunal to make orders designed to meet the lessees' legitimate expectations that the premises are properly managed (see paragraphs 14 – 16 of the 2020 Decision and *Maunder Taylor v Blaquiére* [2002] EWCA Civ 1633, *Sennadine Properties Limited v Heelis* [2015] UKUT 55 (LC), and *Queensbridge Investments Ltd v Lodge*, 2015 WL 7259170).

## **The Draft Management Order**

57. As the Applicants' representative, Mr Willis provided the Tribunal with a draft order ("the Draft Order"). He did not request the New Manager's appointment on the same terms as the terms under which the Current Manager was appointed.
58. The Draft Order was based on that attached to the First-tier Tribunal (Property Chamber) Practice Statement dated July 2023. As such, the Tribunal was entirely happy to adopt that precedent in principle.
59. Mr Willis's draft contained a number of specific clauses as follows:
  - a. In paragraph 5 of the Draft Order, Mr Willis had included 16 clauses reciting extracts from the 2020 Decision and other documents designed to identify the management issues at the Property. The extracts are from his perspective, and most of these sub-clauses are critical of Mr Billen;
  - b. Paragraph 6 of the Draft Order contained ten specific powers that Mr Willis wishes the Tribunal to confer upon the New Manager. Most of these powers are drafted in such a way as to effectively oblige the manager to resolve specific issues in the way that Mr Willis considers they should be resolved;
  - c. The Draft Order required that the New Manager be empowered to change the terms of the flat leases to reduce their proportion of service charges payable from one tenth to one eleventh. In their leases, the nine lessees each pay one tenth of the service charge. The unlet Flat 3, it is obvious to the Tribunal, was to bear the final tenth had it been let, as provided for in clause 4(6) of the SCML lease. As Mr Billen has subdivided flat 3, Mr Willis took the view that Mr Billen should have to pay an extra portion of the service charge for the additional flat. The Draft Order therefore suggests that the New Manager be empowered to collect 2/11<sup>ths</sup> for flat 3 (as well as his contribution for flat 1) from Mr Billen;
  - d. The flat leases contain a ground rent payment to the freeholder of £75.00 per year at present. The Draft Order required that that sum be paid to the New Manager;
  - e. The Draft Order included a right for the New Manager to make an immediate demand of £5,000.00 from each lessee (including Mr Billen in respect of flat 1), and £10,000.00 from Mr Billen for flat 3, as it had been converted into two flats;
  - f. The Draft Order included rights for the New Manager to make monetary demands from certain lessees for works to comply with their own covenants to keep their flats in good repair, and to make demands for improvement works that do not appear to be within the repairing obligations contained in the leases. Specifically, Mr Willis wished the New Manager to be able to require lessees to pay

the costs of installing vehicle charging points, the re-routing of television and data cables, and new equipment associated with a new entrance door intercom and access system.

- g. Mr Willis wished the Tribunal to endorse a penal notice, in the order made by the Tribunal:
  - i. Upon Mr Billen, requiring him to accept greater controls upon his actions in relation to the basement than have already been imposed by virtue of the 2021 Directions, and requiring him to pay all demands made by the New Manager within 28 days of the demands;
  - ii. Upon Mr Billen, Mrs Kaur, Mr & Mrs Malik, Mr & Mrs Boodhoo, Mrs Minhas, Mr & Mrs Dosanjh, and Mr & Mrs Gill, requiring them to pay all demands from the New Manager within 28 days of the demands, and to immediately provide a copy of any subtenancy granted in respect of their flats.

## **Discussion**

*Continuation of the appointment of a tribunal appointed manager.*

- 60. As will have emerged from the section in this decision about our inspection, it is as clear as day that the Property requires active and forceful management to begin to resolve the major issues over its condition and the legal structure of its leases. There are serious health and safety issues at play.
- 61. It is also entirely evident that the lessees are collectively unable to work together to select and appoint a unanimously agreed manager. A majority appointed manager would not command the respect of the minority and the personality clashes which have blighted the Property for over 10 years would be likely to continue. In our view, it is essential that the Tribunal, which is independent of all parties, should confirm the continuation of a tribunal appointed manager.

*Who should the manager be?*

- 62. Quite apart from the fact that the Current Manager does not wish to continue in office anyway, our view is that she cannot do so as she has not demonstrated the capacity and tenacity required to take on this difficult role. We need not dwell on this, but it will suffice to say that a substantial proportion of the service charge arrears are her own demands, and yet no action has been taken to recover them from the lessees. It is a basic function of any manager to recover, whether by persuasion or enforcement, the demands that he or she issues, and the lack of funds has resulted in a deterioration of the Property during her appointment rather than any improvement. We accept that the lack of funds has also prevented her from taking the legal action she might have

wished and note the large sum outstanding to her legal adviser in unpaid fees.

63. We regret that we have to say that the Current Manager cannot remain in post. This is the answer to Mrs Minhas's suggestion that the Current Manager remain in post. We cannot endorse that approach for the reasons above.
64. Mr Billen's view was that the choice of manager should go back to the lessees who should simply elect a candidate by a majority. In our view, that would be disastrous. The position would return to the position pre 2020, and we have explained in paragraph 60 above why we consider that is not a tenable position.
65. In reality, there is only one candidate, namely the New Manager. She is willing to act, clearly has experience, and so far as we could tell in our discussion with her, has sufficient robustness to act fairly between the parties.
66. She was honest with us about the problems she had on one appointment, which we are required to consider, where she came in for some criticism from the Upper Tribunal. We have read the Upper Tribunal decision in that case and have taken into account the UT's criticism. However, we note that the UT was content for the New Manager to continue in place in that case even though it was for a limited purpose, and it also acknowledged the New Managers experience as a tribunal appointed manager.
67. We therefore appointed the New Manager as the manager of the Property as from 1 January 2024 in the Decision.

*How long should the appointment be for?*

68. At present, we see no prospect of an early quick fix to the management issues at the Property. Lessees collectively (including Mr Willis) now seem to operate on the basis that payment of service charges is voluntary, and they need to understand that (subject of course to the statutory controls over the amount of service charge that is payable), no improvement in the condition of the Property or resolution of the dire legal quagmire that the lease structure has created will be reached without it being paid for by the lessees and the freeholder together.
69. So, the length of the appointment will be determined by how quickly the lessees pay their service charges, and then how quickly the New Manager can progress the management challenges.
70. With the prospect of a challenging process to collect service charge arrears (or new demands), and then identification of crucial maintenance works (including selection of contractors and consultation), it is clear to us that three years at a minimum would be required to return the Property to a reasonable and functioning state.

71. But that is only one part of the challenge ahead. We do not think, from the responses we have read from the Respondents, that there is a sufficient understanding of the peril that they face as a result of SCML having been struck off the register of companies, and from the non-registration of the legal title to the areas demised in the SCML Lease to SCML. The combined consequence of these two events is that there is no legal entity in existence with the contractual responsibility to the lessees to repair and maintain the Property. And, aside from the powers that this Tribunal has under the 1987 Act to authorise a manager to collect service charges, there may be no legal entity that has a right to demand service charges.
72. When the leases of the flats were granted, lessees had a reasonable expectation that the Property would be maintained using the mechanisms set out in the leases, which included the interpolation of a tenant owned management company responsible for keeping the Property in good order. The continued existence of SMCL was a requirement of this structure. But the structure has collapsed.
73. Consequently, that issue cries out to be resolved one way or the other, and we see no prospect of lessees being able to have their reasonable expectation of proper management of the Property met, without the continued existence of a tribunal appointed manager (with the powers that the Tribunal can give that manager) until it is.
74. For that reason, we have decided that the appropriate term for this appointment at this time is five years.

*On what terms should the New Manager be appointed?*

75. It is not appropriate, in our view, for the terms of the Management Order to be clearly slanted in favour or against one group of lessees at the Property. Nor is it appropriate for the order itself to prescribe the actions the New Manager must take unless it is clear and obvious that those actions are required and supported by the New Manager.
76. We are therefore not able to agree the terms of paragraphs 5 and 6 of the Draft Order requested by Mr Willis. At the hearing, the New Manager had not been appointed, and she had only paid one visit to the Property. She had not had a chance to obtain objective reports or talk to all the lessees and Mr Billen. She needs to be allowed the space to review her management tasks objectively and without undue pressure from Mr Willis. She may eventually reach the same conclusions as he has about what has to be done, but if she does, and she is not able to persuade all parties to agree with her actions, she should at that point seek Directions and stronger powers, if she feels she needs to.
77. It is not appropriate to threaten some parties with contempt proceedings for failure to pay a bill. That goes substantially further even than the powers of the courts in seeking to enforce debts. Mr & Mrs Boodhoo's solicitors point on this clause to the effect that a penal notice to pay a debt denies the debtor a right to a fair trial is a strong point.

78. The New Manager herself expressed a preference for not being required to collect ground rents. Whilst she needs all the money she can get to carry out repairs, there is a balance to be struck here, and we do not regard it as essential to deprive Mr Billen of the proprietary right to that income.
79. We do not consider that Mr Willis's proposal to charge Mr Billen additional sums arising from his conversion of flat 3 into two flats is appropriate. It effectively amounts to a lease variation and whilst it may be possible to so order, it is contentious and unwise to oblige the New Manager to venture into that territory, certainly at this time. The footprint of flat 3 has not changed.
80. It is also not appropriate to include an expectation that the New Manager will facilitate and arrange improvements to the Property that go beyond the reasonable operation of the lease structures as originally drafted.
81. In consequence of the above points, to a large extent we have not permitted most of the contentious content of the Draft Order requested by Mr Willis. Our wish is for the terms of the order to be even-handed, with the New Manager having adequate powers to address the management issues we have included in the order. She has the right to seek further directions if she needs the Tribunal's further assistance.
82. It is obvious that the New Manager needs funds immediately. The payments envisaged by the Draft Order are, we consider, reasonable at this point. But, firstly, and consistently with our approach set out in paragraph 79 above, the sum due for flat 3 should be the same as the sum for all other flats, and secondly, the sums payable should be regarded as being on account of service charges, for they will need to be explained and justified in due course. So, paragraph 30 of the Order should be regarded as accelerated payments of justifiable service charges rather than additional payments over and above what can be justified as service charges. It would be unsurprising to us if the New Manager used funds demanded to collect service charge arrears, as if these were all paid, the finances would be in place to make a substantial difference to the Property, and to make a start on resolving the management challenges set out in paragraph 7 of the Order.
83. We have taken the view that the lease structure is defective. Recital number (3) in the SCML Lease provides:

“So as to ensure the effective maintenance and management of certain common parts (being the demised premises as hereinafter defined) of the Building which will not be included in any leases of the said Flats and the provision of certain services to and for the Lessees for the time being of the said Flats the Management Company has been incorporated under the Companies Acts 1958 – 1967 with the objects (inter alia) of taking from the Lessors a Lease of the demised premises and undertaking certain obligations and the provision of certain services”.

84. This recital properly describes the good reason for the existence and operation of SCML. It was granted a lease of the structure and grounds of the Property, which it was to keep in repair in return for the payment of service charges. Without it being in existence and operating, the ownership of the structure and grounds reverts to Mr Billen, but without any obligation upon him to carry out any maintenance or repair and without any right for him to collect any contribution towards the costs of so doing. Conversely, the lessees have no obligation to pay any service charges to him.
85. This is a very serious management challenge. We have given thought to how we can assist the New Manager to resolve this problem. Our first action is to order that the New Manager's powers should be at least the same powers that SCML would have had in the event that it were still in existence and its lease were registered (see clause 8 in the Order). It seems quite clear to us, purely from the drafting of the flat leases and the SCML Lease, that this was the legal basis upon which the Property was to be managed, and it must have been the original lessees' legitimate expectation that that structure existed and worked.
86. Quite how this issue is to be resolved, we do not know, and it is not appropriate for us to determine within these proceedings, but until it is, what was obviously originally intended should be put into effect on at least an interim basis. It is undoubtedly a management challenge that the New Manager cannot ignore, but she will need to assess the position with some care (and no doubt will need to review the legal advice received by the Current Manager).
87. We have not included a power in the Order permitting the New Manager to apply for a vesting order under section 1017 of the Companies Act 2006 even though such a power was granted in the 2020 Order. We have however included resolving the issue within paragraph 7, and we have specifically included the possibility of applying for directions concerning a vesting order within paragraph 15. Our view is that if and when the New Manager has determined the most appropriate route forward, this issue will require a specific direction from the Tribunal, not least so that all parties will have the opportunity at that point to address the issue and its resolution in the light of a more defined plan than currently exists.
88. The second action we take is to enhance the New Manager's rights to apply for Directions in relation to the basement and the garages (see paragraph 15(e) in the Order).
89. Our third component is in paragraph 5 of the Order, which clarifies that our original direction dated 18 August 2021 preventing Mr Billen from carrying out works in the basement continues in full force and effect throughout the period of the New Manager's appointment. It also clarifies that she has the right to enforce those directions through contempt proceedings if she needs to.
90. We have in mind that the New Manager may take the view that the cost of putting right any defective building works, reinstatement works, and



works to make the basement and the Property safe in the light of Mr Billen's building works should not be borne by all lessees. If she takes that view, she should apply for a further direction to the effect that Mr Billen must bear a larger part, or even the whole of those costs.

91. We mention two other practical issues that the New Manager will need to resolve and on which we offer our views. The first is insurance. The New Manager must insure the Property (see paragraph 48 of the Order). We imagine that the Property is currently insured by the Current Manager, though we have no information to confirm. We point out that the obligation to insure under the leases rests with Mr Billen (see clause 5(6) of the flat leases), with SCML being obliged to ensure that this is done (see clause 6(c)), and to collect the premium (Fifth Schedule paragraph 1(1)). As SCML no longer exists, it is arguable that Mr Billen remains responsible for insuring but with no mechanism to collect any share of the premium. For the time being, requiring the New Manager to insure resolves the question of how insurance is guaranteed, but this issue will need to be resolved in due course.
92. The second additional issue relates to the way in which the Current Manager should complete her period of management in a proper manner. Our view is that she should arrange for accounts for the years she has been manager to be prepared (2022 and 2023 – accounts for 2021 have already been produced). She should arrange to discharge the debts she has incurred during her management. She is entitled to be paid all properly incurred fees for the period of her management. Our view is that the Current Manager should invoice the New Manager for all outstanding fees and costs to complete her appointment, who should then collect those sums from the service charge payers in the proportions they currently bear under this order. If any party disagrees, they should seek directions from the Tribunal.
93. Having considered the above points carefully, we make the order as set out in the terms of the Order dated of even date herewith.

### **Appeal**

94. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall  
First-tier Tribunal (Property Chamber)

## Appendix

### Respondents

#### Respondents with an interest in the Property

- (1) Talvinder Singh Billen and Satbir Kaur Billen (Freeholder and lessees of Flat 1)
- (2) Jit Kaur (Flat 2)
- (3) HussainMalik and Tahseen Malik (Flat 7)
- (4) Mohammed Salim Rezah Boodhoo (Flat 8)
- (5) Charnjit Kaur Minhas (Flat 10)
- (6) Rajinder Singh Dosanjh and Paramit Dosanjh (Flat 11)
- (7) Steve Gill and Michelle Gill (Flat 12)

#### Managers

- (8) Lyndsey Cannon-Leach (current manager)
- (9) Alison Mooney (prospective manager)

#### Other Respondents

- (10) Stoughton Court (RTM) Company Limited