FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AW/LVM/2023/0008**
Property	**:**	**1 Palace Gate, London W8 5LS**
Applicants	**:**	**Michael Maunder Taylor FRICS FIRPM**
Representative	**:**	**In person**
Respondent	**:**	**(1) Winchester Park Limited (Landlord)** **(2) Various Leaseholders as per the application**
Representative	**:**	**Mr H Lederman of counsel**
Type of Application	**:**	**For a variation of a management order**
Tribunal Members	**:**	**Judge Prof R Percival** **Ms A Flynn MA MRICS**
Date and venue of Hearing	**:**	**2 October 2023** **10 Alfred Place**
Date of Decision	**:**	**22 January 2024**

DECISION

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The application

1. The Applicant was appointed under a management order made on 26 July 2018. The decision making the order was set aside and re-made in part under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rule 51, on 12 February 2020 (BIR/00AW/LAM/2015/0001; BIR/00AW/LAM/2019/0002). That order was due to expire on 25 July 2020. On 23 July 2020, it was extended to 31 May 2023 (BIR/00AW/LVM/2020/0001).

2. The current application seeks the further extension of the order for a period of three years. An order was made in the directions that the 2018 order shall continue in force until the determination of this application.

3. The clause in relation to professional indemnity in the 2018 order was varied on 25 August 2021.

The property

4. 1 Palace Gate is a property on the corner of Palace Gate and Kensington Road, overlooking Kensington Gardens on one side. It consists of five flats let on long leases, and three commercial properties.

The leaseholders

5. The leaseholders' positions in respect of the application are as follows. The designations of the commercial premises are irregular.

   Flat 1 (Eperstein SARL): Opposed the application
   Flat 2 (Mr I Zand): Supported the application
   Flat 3 (Mr A Sehayek): Supported the application
   Flat 4 (Mr P Teplukhin): No response
   Flat 5 (Mr Y and Mrs A Sagnak): Supported the application
   Unit 6 or C: Not currently let
   Unit D or 1D (Le Petit Sud Ltd): Opposed the application
   Unit E or E1 (Blue Island Properties Ltd): Supported the application

6. Flat 4, which is currently in the process of sale, did not respond, so fell to be treated as neutral.

The issues and the hearing

Introductory

7. Mr Maunder Taylor represented himself, and gave evidence. Mr Lederman of counsel represented the first Respondent (hereafter, "the Respondent"). Mrs Elizabeth Taylor, a consultant who acts as the

representative of both the Respondent and the lessee of flat 1, Eperstein SARL (Eperstein), a Luxembourg registered company, gave evidence.

8. In addition to the litigation relating to the appointment of the manager and its extension noted above, there has been a substantial body of litigation involving the parties and the properties, both in the Tribunal and the courts. It is unnecessary to set that out in extenso at the outset, but it provides important background, and specific cases will be mentioned when relevant.

9. By way of overview, Eperstein was liquidated in Luxembourg in May 2023. It had been the subject of extensive litigation in England in respect of service charge arrears and associated costs. Mr Lederman had been informed that attempts to appeal or revoke the liquidation were afoot.

10. The lease of unit E provides for a contribution to insurance rent, but not the service rent (ie the non-insurance service charge) (a matter the subject of another application before the Tribunal). The payment of service charge in respect of the unit by the Respondent is the subject of on-going litigation.

11. Number 1 Group Capital PCC Jersey (hereafter, Number 1 Group Jersey) was the one-time lessee of unit 6/C. Its surrender of the lease was accepted by the Respondent, following adverse findings against the lessee in respect of service charge arrears in Tribunal proceedings, and default judgment in the County Court (in December 2021). The deed of surrender did not include a condition that service charge arrears be paid. The Respondent does not accept that it is liable for service charges in respect of the unit. This too is the subject matter of on-going litigation.

12. There has been other litigation between the lessees of flats 2, 3 and 5 against the Respondent, including for an acquisition order under Landlord and Tenant Act 1987, section 33, and for collective enfranchisement. The latter is, apparently, currently ongoing.

13. The history is further complicated by the need for the 2018 decision to be in part set aside and re-made in 2020, as a result of errors made in the initial decision and subsequently by the Tribunal. This aspect is not relevant to the current application.

The parties' opening positions

14. Mr Maunder Taylor's position was that the management order had been made for three reasons: the opacity of the ownership of the freehold, continuing litigation between the parties, and the need for major works. These concerns continued.

15. Mr Lederman's core proposition was that the litigation of all sorts involving the parties was, essentially, a struggle for control of the property between two sets of wealthy individuals or families. In one camp were the freeholder and those leaseholders associated with it, and in the other, the residential leaseholders supporting the current application. In that context, Mr Maunder Taylor had been co-opted by the latter group, and, rather than acting neutrally, he had been drawn into the arena.

16. In respect of the charge of opacity, he argued that there was opacity on both sides, and it was to be expected that wealthy individuals with international connections (again, on both sides) would use trusts and off-shore entities to organise their affairs.

The evidence

17. In his principal witness statement (that dated 18 July 2023), Mr Maunder Taylor related the issues that he had sought to deal with on appointment. These included litigation in respect of whether overpayments had been made by the lessee of flat 4 and ongoing litigation on the liability for payment of the equivalent of a service charge in respect of unit E by the freeholder.

18. In respect of flat 1, Mr Maunder Taylor made an application under section 27A for the Tribunal to determine the reasonableness of sums demanded in respect of the year from 31 May 2019 towards the building up of a reserve fund. Mr Maunder Taylor reports that lower figures were substituted by the Tribunal, as a result of which he credited "all parties", by which we understood him to mean all lessees, not just that of flat 1, the party to the application.

19. The Decision in that case (LON/00AW/LSC/2019/0301) shows that the lessee of flat 1 contested the right of the manager under the lease to demand a reserve fund. The Tribunal found in favour of Mr Maunder Taylor. However, the demand for a total of £88,600 (comprising provision for internal redecoration, lift replacement and – at £75,000 – external repairs and redecoration) was reduced to £22,500 (£16,000 for external repairs and redecoration).

20. More generally, Mr Maunder Taylor states that Eperstein, the lessee of flat 1, had failed to pay service charge contributions, administration charges and costs awarded against it, either in a timely fashion or at all. Briefly, as a result of an application to the Tribunal (which also constituted itself as the County Court for the purpose of determining a linked claim)(LON/00AW/LSC/2021/0014 and G43YX307), awards were made against Eperstein, but remained unpaid. As a result, enforcement proceedings were taken in the County Court, which were ongoing. Since the original determination, further arrears had been accrued by Eperstein, and a further claim had been made in the County

Court. At the date of the witness statement, those proceedings were continuing.

21. Mr Maunder Taylor summarised the financial position in his witness statement. He said that, including the service charge demanded for the year beginning 31 May 2023, flat 1's arrears were £111,858 (apparently excluding some costs/administration charges and interest the subject of enforcement action).

22. The same figure in respect of Unit 6/C was £30,585, and for Unit D £19,063. Action was either ongoing or afoot in relation to both lessees (or, rather, in the case of Unit 6/C, the Respondent, given the surrender of the lease). As for Unit E, the same figure was £56,346.

23. The other units were paid up to date, and Mr Maunder Taylor anticipated payment of the latest demand shortly.

24. The reserve fund, as of June 2023, stood at £136,979.

25. Mr Maunder Taylor outlines the steps he has taken to identify and undertake major repairs to the exterior, plus internal redecoration and works to the lift. Without restating the entire history, the position, in brief, as of the date of the witness statement was as follows.

26. As to the major external works, there were three priced options (all excluding VAT): major works to the roofs (£338,550); external repairs and redecoration, excluding the roofs (£183,550); and what is described as "full scope of works (roof and external repairs)" (£395,600, plus professional fees). These options would be subject to a consultation process under section 20 of the 1987 Act, and competitive tendering.

27. As to the lift, Mr Maunder Taylor provided indicative costings for modernisation of the lift, and its replacement. The former would cost in the range of £90,000 to £100,000; the latter £110,000 to £120,000, at 2021 prices. Mr Maunder Taylor considered that lift works were unlikely to be possible in the next three years, but that "if all parties start to cooperate and make payment of the services charges demanded, progress can be made in collecting the funds required for the lift works", to be undertaken at a later date.

28. The communal hall had been redecorated in 2022.

29. Mr Maunder Taylor was cross-examined by Mr Lederman.

30. Mr Maunder Taylor agreed that there had been four property managers responsible for the building since the original management order was

made. There was significant movement of property managers, exacerbated by the pandemic. They inspected the building at least quarterly, and he inspected personally on occasions.

31. Mr Lederman raised the issue (set out in Mrs Taylor's witness statement) of personal possessions stored in the communal halls outside some of the flats. Photographs taken in July 2023 appended to Mrs Taylor's witness statement showed lines of possessions such as shoes, a child's tricycle and bicycle, a chair, boxes, dog-walking impedimenta and so on in the halls, apparently outside flats 2 and 3. Mr Maunder Taylor said that when property managers observed personal possessions left in the hall, the property managers wrote to the lessees responsible, requiring them to remove the items. He agreed that the presence of personal items in the halls had been identified as a fire risk in the fire risk assessment in 2021, and that it was a long standing problem.

32. As a general matter, Mr Maunder Taylor said that tenants leaving their possessions in the halls or other communal areas was a frequent issue in blocks of flats, and was a difficult problem to deal with. That tenants did not have the right to do so, and that it was a fire risk, could be brought to tenants' attention, but it was difficult to enforce proportionately, other than by writing letters to tenants. That is what had happened in respect of this property.

33. Mr Lederman pressed Mr Maunder Taylor in respect of enforcement. We asked Mr Lederman what more he was suggesting Mr Maunder Taylor could have done. He suggested sterner letters. Mr Maunder Taylor said that the action that he and/or the property managers had taken was reasonable and proportionate.

34. Mr Maunder Taylor was cross-examined about a leak into the cellar of Unit D referred to in Mrs Taylor's witness statement. The effect of the questions went to whether Mr Maunder Taylor's response to Mrs Taylor's witness statement had been misleading, in giving the impression that the leak had not been reported. We understood Mr Maunder Taylor to have stated only that the issue had not been escalated to him, not that it had not been reported to his company. He did not deny that the leak had persisted for a long time.

35. Mr Lederman put to Mr Maunder Taylor that another leak referred to by Mrs Taylor in her witness statement into flat 1 and Unit E was a building problem within Mr Maunder Taylor's company's responsibilities. He agreed that the investigation of it was, and it took some time to resolve. But remedying the leak was a matter for the lessee of flat 2 (which is directly above flat 1, which is, in turn, above Unit E), as the leak was from the boiler in that flat. Mr Maunder Taylor's understanding was that it had been finally resolved early in 2023, by the lessee of flat 2.

36. Repair issues had arisen in in respect of the balcony to flat 1. Mr Lederman put it to Mr Maunder Taylor that the lease plan substituted by the deed of variation of the lease for the flat dated 26 June 2017 did not include the balcony. Mr Maunder Taylor pointed to the provision in the original lease that noted that the lease plan was only for the purposes of identification. Mr Lederman said he would make legal submissions on the issue in due course. In fact, he did not do so, and we did not invite him to in closing submissions. We doubt whether, even if we could have done so, it would have advanced matters materially for us to have come to a conclusion as to legal responsibility for leaks occasioned by blockages in the drain on the balcony.

37. Mrs Taylor's witness statement explained that she had been involved with the property since 2016. When, in July 2020, a Ms de Maigret had bought the shares in the Respondent company at a time when it was under a fixed charge receivership, Mrs Taylor had been engaged by Ms de Maigret to continue to look after the property as a consultant. The witness statement was made on behalf of the Respondent, but Mrs Taylor also represented the lessee of flat 1, Eperstein.

38. In her witness statement, Ms Taylor makes a series of complaints about the management of the property. Scaffolding erected to undertake works on flat 3 was left in place for fifteen months, and no work was done to address the condition in which the scaffolding had left the exterior. Mrs Taylor suggests that it would have been cost effective to have undertaken "some works" on the property while the scaffolding was in place.

39. Mrs Taylor complains of a number of damp or leak issues which were put to Mr Maunder Taylor in cross examination. Similarly, the evidence of the occupants of flats 2 and 3 storing personal items in the halls upon which Mr Maunder Taylor was cross examined was set out in the witness statement.

40. Mrs Taylor also referred to evidence of dogs being kept by lessees. We assume that this was not put as a complaint to Mr Maunder Taylor because his response was accepted by the Respondent (it was that the relevant clause in the leases only prohibited pets that caused a nuisance, and no complaints of nuisance had been made).

41. The witness statement also makes complaints about the amount of service charges demanded, both on behalf of the Respondent and of the tenants of flat 1 and Unit D, and the condition of the property. A comparison is provided of service charges made in properties nearby. The major works should not be undertaken, given the effects of the pandemic and the Russo-Ukrainian war.

42. Mrs Taylor also objects to the lack of continuity of management, given that there have been four property managers responsible for the property since 2021.

43. The witness statement closes with Mrs Taylor reporting that the Respondent does not wish to manage the property itself, and that she has obtained quotations from two managing agents based in the locality, who could, she says, have a more "hand on" approach to management.

44. During his cross examination, Mr Maunder Taylor asked Mrs Taylor why Eperstein had failed to pay its service charge. She said that it was in protest against the bias shown against them by Mr Maunder Taylor, who would have immediate recourse to litigation rather than enter into dialogue with it. We asked her whether, if Mr Maunder Taylor communicated with them about payment without litigation, they would pay their service charge. She answered that perhaps they would.

45. Mrs Taylor was not able to say why the Respondent accepted the surrender of Unit 6. She was generally consulted about major decisions, but was not involved in that one.

46. Mr Maunder Taylor asked about the ownership of the companies represented by Mrs Taylor. The Respondent was owned by a company called EM Properties, which in turn was owned by a company called Doslet, which in turn was owned by Ms de Maigret.

47. As to Eperstein, Mrs Taylor said that Eperstein is owned by N1G, which in turn is owned by Ms Alexandra Zetterberg, who is the wife of Mr Alon Mahpud. We were aware from earlier Tribunal decisions that Mr Mahpud had controlled the Respondent before the receivership.

48. Mrs Taylor was asked if N1G had anything to do with the former tenant of Unit 6/C. She said that it did not, that the former tenant was Number 1 Group Jersey, which was not an active company any more. She then added that Ms Zetterberg had been the director of Number 1 Group Jersey. She went on to say that that N1G has a legal charge over the Respondent.

49. We note that the Respondent's bundle contains emails dated up to June 2022 from Mr Mahpud in which he is described as the CEO and Director of a various N1G companies with similar names, including Number 1 Group Jersey. We also note that the Monaco N1G company shares the same address as Doslet SCP. We noted this after the hearing, however, and did not ask the parties about it. We do not read anything into the shared address.

50. There was no ulterior connection between Le Petit Sud and the Respondent or Eperstein, Mrs Taylor said, other than the obvious tenant/landlord relationship.

51. Mr Maunder Taylor asked Mrs Taylor about the fact that a Mr John Roddison is shown as due diligence agent in respect of the Respondent and Eperstein and as a director of Le Petit Sud in Companies House registration documents. Mrs Taylor said that Mr Roddison was an accountant, and "a part of" Le Petit Sud Ltd, in the context of a Mr Olsson taking over the operation of Le Petit Sud Ltd (a restaurant) from Mr Montanaro, the previous director. The Accountancy aspects of the transfer was undertaken by Mr Roddison, and it may have been that he was named as a director for those purposes, but she understood that Mr Olsson was now the only director. Mrs Taylor knew Mr Roddison professionally (from previous employment), and it was she who asked him to undertake the necessary filing in relation to the due diligence requirements in relation to the registration of overseas companies with interests in property for both the Respondent and Eperstein. She had recommended him to Le Petit Sud Ltd.

Submissions

52. Mr Lederman's primary submission remained that there were two hostile groups within the property, and that Mr Maunder Taylor had sided with one of them. The result was that there had been little or no progress with the major works, the necessity for which Mr Lederman did not question. The original impetus for the appointment of the manager was that it would provide a "silver bullet" to resolve the management issues at the property, but that was not how it had turned out.

53. In support of the submission, Mr Lederman argued that Mr Maunder Taylor at least appeared to be favouring one group (which he described as comprising the lessees of flats 2, 3 and possibly 5) against the other group of tenants and "associated entities". While it was understood that there was a good, objective reason to pursue service charge arrears, the application for extension appeared to be associated with the lessees of flats 2 and 3, and when those lessees were in breach of their leases, they do not appear to have been pursued with anything like the same vigour.

54. The breach he was referring to was the leaving of personal possessions in the halls. It was easy to say that these were minor matters, he said. Mr Lederman noted that the problem had been adverted to in the fire safety report of 2021, and it was a recurring problem. While a proportionate approach was necessary, it was a fire safety issue. As a related charge, Mr Lederman said that Mr Maunder Taylor had not properly disclosed the issue (although Mr Lederman emphasised that he was not alleging professional misconduct on Mr Maunder Taylor's part).

55. We understood Mr Lederman to be, first, suggesting that Mr Maunder Taylor had, in fact, shown bias towards what we might call the flats 2, 3 and 5 camp. But he also argued that the *impression* had been given that Mr Maunder Taylor was favouring one faction, and that that was the last thing that was needed in a property with the history of this one. That, he said, was more important than anything else. In pursuance of that argument, Mr Lederman criticised Mr Maunder Taylor for not producing the letters written to the leaseholders when it was observed that they had left possessions in the halls.

56. Mr Lederman also made the more general point that management since the management order was made had been flawed, pointing to the problems with leaks, and the failure to engage with them, and the turnover of property managers. He referred us to a condition report prepared on the basis of inspections in July and August 2023 by one of the property managers approached by Mrs Taylor, which indicated a general deterioration in the property, and that the planned maintenance and repair work proposed since 2018 had largely not been carried out. Some of that related to the major works, Mr Lederman submitted, but not all of it.

57. Mr Lederman said that it might be obvious that the service charge arrears should be pursued in litigation, and that it might be that Mr Maunder Taylor was in the best position to conduct that litigation, but that did not mean that he should continue to manage the property in other respects. In that event, and as a lesser alternative to his submission that we should not extend the management order at all, we could extend the management order, but closely confine it to conduct of litigation. The general management of the property would then revert to the Respondent.

58. Mr Lederman also referred to the collective enfranchisement proceedings, which would, if successful, make the management order academic. That would be so on the basis that, from the point of view of flats 2, 3 and 5, the problem of the Respondent's faction would be removed.

59. Mr Lederman also criticised Mr Maunder Taylor's plans for the management and maintenance of the property. He accepted that the major works clearly needed to be undertaken, but what, he asked rhetorically, was the long term plan, if there was an extension, the litigation was concluded and the major works undertaken? Was there to be a further three year extension? There was no long term plan from flats 2, 3 and 5. Everyone accepted that the major works had to be done, and the litigation concluded, but there was an absence of planning beyond that. Rather, he adverted to Mrs Taylor's approaches to two local management agents, as creating the possibility of a clean break.

60. Mr Lederman concluded by saying that the onus was on Mr Maunder Taylor (and, he said, his supporters in flats 2, 3 and 5) to show that an extension should be made, and that it should be made in respect of this particular manger, and that was not discharged.

61. We asked Mr Lederman how confident the Tribunal could be that the major works, which we saw as the principal reason for the imposition of the management order, would be undertaken if we did not extend the order. His response was that originally, the concern was with the direct management of the property by Mr Mahpud. That had now changed, with Ms de Maigret as director and Mrs Taylor's involvement. The personnel and legal entities had changed. As Mrs Taylor's witness statement made clear, the intention now was that a managing agent would be engaged.

62. Mr Maunder Taylor opened his submissions by noting that the Respondent's submissions today were (in part) similar to those made at the previous extension decision, referring us to paragraph 43 of the 23 July 2020 decision (BIR/00AW/LVM/2020/0001). The drew our attention to the Tribunal's response in paragraphs [70] to [74], which rejected those submissions. The Respondent's submissions underplayed the significance of the Tribunal's finding. There was a finding of poor previous management, not a "perceived" failure, and so on.

63. Mr Maunder Taylor said that there were links between the three companies responsible for just under 40% of the service charge (ie the Respondent, Eperstein and Le Petit Sud Ltd, assuming that the Respondent is responsible for the service charge in relation to the surrendered lease of Unit 6/C, and relying on Mr Roddison as the link with Le Petit Sud).

64. But whether or not there was association, this was nonetheless a significant proportion of the service charge. Without these contributions, it was not possible for the major works – which, through Mr Lederman, the Respondent agrees should be carried out – can in fact be carried out. Mr Maunder Taylor described as an abuse of process the argument that the management order should be allowed to elapse on the basis that the major works have not been achieved, where that argument is put by those who have prevented the major works being undertaken by refusing to pay for them.

65. Mr Maunder Taylor argued that, if the order were not extended, the Respondent would reallocate the arrears in relation to Unit E to the residential lessees, that being their position in the litigation in respect of the issue; and the arrears in relation to Unit 6/C would presumably remain either unpaid, or similarly redistributed.

66. The acceptance of the surrender of the lease for Unit 6/C without provision for the resolution of the arrears was either an abuse of process or an attempt to frustrate the management order.

67. In respect of the alternatives suggested by Mr Lederman, there was no reassurance that the freeholder and its associated entities would pay their proportion of future costs, nor that instructions would not be given to the management agents to revise the service charges against the interests of the residential lessees.

68. Mr Maunder Taylor submitted that if Mr Lederman was correct that at some point in the near future, if there were to be collective enfranchisement, and as a result the management order was no longer necessary, then that would be the time for the order to be discharged (presumably, unopposed).

69. As to Mr Lederman's suggested alternative that the management order should only continue Mr Maunder Taylor's engagement in respect of litigation, Mr Maunder Taylor said that that would not deal with matters such as future apportionment, billing, credit control and so forth.

70. In respect of Mr Lederman's argument that we must be satisfied not just that there should be a management order, but that the manager appointed should be Mr Maunder Taylor, Mr Maunder Taylor noted that Mr Lederman had not alleged any misconduct on his part, and in any event this approach was not put forward in the Respondent's statement and there was no cross-application for the appointment of another named manager. There was no real evidence of favouritism that could justify such a conclusion.

71. We put it to Mr Maunder Taylor that the length of the management order, if he were successful, would be longer than the Tribunal would usually consider appropriate. His answer was that each application must be considered on its own merits. In this case, various connected parties have refused to pay; litigation and debt recovery slowed as a result of the pandemic, and the litigation has had to continue to the bitter end in terms of enforcement action due to the obduracy of those in arrears (he particularly referred to Eperstein). More generally, if by a party simply withholding payment to a manager it could succeed in frustrating the purpose of a management order because the Tribunal would eventually lose interest and allow the order to lapse, then section 24 would not be providing the sort of protection it was designed to afford. In this case, the freeholder was using its association with some of (or at least one of) the tenants to frustrate the order.

Determination

72. First, our impressions of the witnesses. Mr Maunder Taylor gave clear and, we consider, honest answers to the questions put to him. Mrs Taylor also appeared to be an honest witness. We were somewhat surprised about some of her answers – for instance, that she was generally consulted by the Respondent (and Eperstein) on important matters, but that she knew nothing at all about the decision to accept the surrender of the lease of Unit 6/C. But that is not sufficient for us to conclude that she was withholding information from us. On one or two occasions, she clearly took care to qualify answers, lest they be misleading. For instance, she originally said there was no connection between Eperstein and Number 1 Group Jersey, but then corrected herself to say that Ms Zetterberg had been a director of the latter. Similarly, she originally identified Ms Zetterberg's role without mentioning that she was Mr Mahpud's wife, but then, and without prompting, offered that information a little later.

73. We now consider how we should approach the allegation of links between the Respondent, Eperstein and Le Petit Sud Ltd.

74. We reject Mr Maunder Taylor's submission that they are linked via Mr Roddison. We accept Mrs Taylor's evidence that his involvement in all three companies was as a result of recommendations by Mrs Taylor herself for him to be engaged by them for accountancy-related services.

75. We do not understand it to be contested that there are links between Eperstein and Number 1 Group Jersey, the previous lessee of Unit 6/C. Both are linked through company ownership to Mr Mahpud and his wife, Ms Zetterberg.

76. Mr Mahpud controlled the Respondent before the fixed charge receivers were appointed. There is (given our finding above in relation to Mr Roddison) no evidence of an ownership link via shareholding or personal or family connections between Mr Mahpud or Ms Zetterberg on the one hand, and Ms de Maigret or the Respondent as a company on the other.

77. We do know, however, that N1G has a legal charge over the Respondent, because Mrs Taylor told us so. We do not know the nature of that charge. It does, however, tell us that there is *a* financial link between the two.

78. There are other relevant circumstances.

79. First, both are represented by Mrs Taylor. That representation includes a property management element. Mrs Taylor explained that she undertook everyday tasks for both, because Ms de Maigret lived in Dubai, and Ms Zetterberg in Monaco.

80. Mrs Taylor's appearance as a witness before us must mean that, as a matter of substance, Mrs Taylor did not consider that there was a conflict of interest in her giving evidence when she held representative employment with both of them. We give this some weight. It is at least suggestive that each company saw its interests as significantly aligned with the other.

81. Secondly, and more important, are the circumstances in which the Respondent accepted the surrender of the lease of Unit 6/C held by a lessee linked to Eperstein/Ms Zetterberg/Mr Mahpud. The Respondent accepted the surrender of the lease at a time when default judgment had been given against it, without the surrender being conditional on the payment of the arrears of service charge or for any other arrangement in respect of the arrears to be made.

82. What reasonable motive could there have been for taking that decision? On the face of it, even with a Tribunal manager in place, it was in the Respondent's straightforward financial interests that the value of its property be maintained by the expenditure of service charge-derived funds, where those funds were derived from an entirely independent source. One would expect, therefore, it to be in its interests that the debt be paid.

83. One way in which the decision to accept surrender unconditionally could be rationally explained is, clearly, if there was a link between Number 1 Group Jersey (and therefore Eperstein/N1G etc) and the Respondent. The decision would allow the linked parties to evade a debt, and so be in their collective interest.

84. We think that likely. But we do not think we need to go quite that far. More moderately, we can simply accept that the Respondent, in acting as it did, was continuing the previous policy of the Respondent before the receivership, that policy being antipathy to the manager, and a desire to frustrate his attempts to secure the objects of the management order. It seems to us evident that that was the case. Once we accept that that policy existed, we do not need to determinatively conclude that the reason for the policy was a (at least in part) hidden economic link between the respondent and Eperstein/Ms Zetterberg/Mr Mahpud. It is sufficient that we conclude that that policy was in place.

85. We proceed, therefore, on the basis that, whether there is another link or not, the Respondent has evinced an intention to continue under its new ownership to conduct itself in the same way in which it acted before the receivership.

86. We reject Mr Lederman's central contention, that Mr Maunder Taylor either was in fact, or could reasonably be perceived as being, biased against the Respondent.

87. The only basis upon which the charge of bias was made was that Mr Maunder Taylor took robust action in litigating the failure of some tenants to pay service charges, but did not take robust action against the lessees of flats 2 and 3 in respect of the storage of personal items in the halls.

88. We agree with Mr Lederman that the storage of personal possessions in the halls is not a trivial matter. He quite rightly calls it a fire safety issue. It is something that the lessees should not do, and it should immediately cease.

89. However, Mr Maunder Taylor is obviously right that it is something that requires a proportionate response. Mr Lederman did not, because he could not, suggest that Mr Maunder Taylor should have taken legal action to prevent the storage of items in the halls, which are outwith the tenant's demise. Mr Maunder Taylor explained that, when the presence of personal items in the halls was observed, letters were sent to the tenants. The most that Mr Lederman could say was that the sending of letters had not been effective, and that therefore stronger letters should have been sent. Mr Lederman observed at one point that the documentary evidence did not include copies of the letters, but we do not doubt Mr Maunder Taylor's evidence that there had been letters (and Mr Lederman did not invite us to so doubt). So neither we nor the Respondent know whether the letters were phrased in a sufficiently vigorous terms, and it may be that further pressure of this sort (that is, other forms of persuasion) could be deployed. But even if that were so (and we do not know), it cannot amount to a serious challenge to the manager's approach.

90. On the other hand, the collection of service charges to fund the major works (and the other matters) is fundamental to the proper maintenance of the fabric of the building, and thus fundamental to the purpose of the management order. It certainly requires the manager to take legal action, as he has had to do, in the face of obdurate and persistent non-payment.

91. In both cases, in our judgement, Mr Maunder Taylor has acted proportionately.

92. It follows that we reject the suggestion made by Mrs Taylor that the failure of Eperstein to pay its arrears of service charge was in protest at the bias of the manager, and that, if a more collaborative approach had been adopted, Eperstein might have paid the service charges it owes. The suggestion borders on the absurd.

93. It may be that there are two opposed groups involved with the building, and that the lessees of flats 2 and 3 (and possibly 5) are one such group. But the approach that Mr Maunder Taylor has taken to the breaches of their leases on the one hand, and of the use of the halls beyond that

allowed in the leases on the other does not, properly viewed, provide any evidence at all of Mr Maunder Taylor favouring one group above the other.

94. So we reject the main plank of Mr Lederman's argument.

95. But we should also observe that Mr Lederman was representing the Respondent. Unless we should indeed consider the Respondent to be properly identified with Eperstein and Le Petit Sud Ltd, we do not see why vigorous pursuit of their arrears could be seen as bias against the Respondent, even if it had been (contrary to our primary finding) bias against those tenants.

96. The same cannot be said of the manager's attempts to fix the Respondent with the debts, and continuing service charge liabilities, in relation to Unit 6/C. That clearly directly engages the financial interests of the Respondent. But the context of that is not, for the reasons we have given, a matter of bias by the manager against the Respondent, but, as we have explained, a result of the unconditional acceptance of the surrender of the lease. That, in turn, is a result of the new management of the Respondent persisting with the policy of obstruction pursued by the previous management of the Respondent. That dispute is one generated by the animus of the Respondent against the manager, not of the manager against the Respondent.

97. We do accept that there is some justification in the criticism of the day to day management of the property in respect of at least some of the leaks to which Mrs Taylor drew attention. In some cases, there may be real legal arguments as to who is responsible (for instance, in the case of the water ingress consequent on the blocking of the drain on the balcony adjacent to flat 1). And it seems clear that the leak emanating from the boiler in flat 2 (and effecting the two properties below) was the responsibility of the lessee of flat 2, not the managing agent. But the long lasting leak first identified in 2021 into the cellar of Unit D was not investigated and dealt with as it should have been (a point effectively conceded by Mr Maunder Taylor's observation that it had not be escalated to him by the tenant – it should have been escalated to him by his property manager). However, these criticisms, while not trivial, do not invalidate the ongoing need for the management order to implement the major works in the face of the continued opposition and obstruction by some of the tenants and the Respondent (whether linked or not).

98. We remain concerned at the potential length of the management order. It must be rare for the Tribunal to extend a management order to eight years. However, we agree with Mr Maunder Taylor that our decision must be based on the circumstances as we find them when considering an application. In this case, the resistance and obstruction that the manager has faced, exacerbated by the slow-down in the courts and

tribunals as a result of the pandemic, mean that an extension is required to secure the original purposes of the order. We are not inclined to accept that the obstruction will succeed.

99. We accordingly determine that the application to extend the order succeeds.

100. There have been delays in the production of this decision, for which we apologise. In the interim, the management order was continued as a result of the order made in the directions. The application was to extend the order for "a further three years". Neither party raised the date until which the order should be varied. We take account of that delay, and the fact that the application was made close to the original end date. Given the running extension conferred by the directions, we consider it appropriate to make an order to vary the order so that the additional three year period runs from today's date. The order is accordingly extended until 22 January 2027.

101. Mr Maunder Taylor applied for an adjustment in the remuneration provision in the order. He reports that the management fee for the year ending 31 May 2024 is £8,688 plus VAT, as increased by the inflation adjustment provision. He notes that the original fee does not take account of recent fire safety legislation, that is, the Fire Safety Act 2021 and the Fire Safety (England) Regulations 2022. He argues that the new fee should be set at the now current fee, with the same provision for annual inflation review, and that in addition, we should make allowance for remuneration on a time spent basis for work on compliance with the fire safety legislation. Mr Maunder Taylor reports that most compliance work undertaken by his firm is handled by independent consultants.

102. No opposition has been expressed by the Respondent.

103. We consider the proposals made to be reasonable and appropriate, and we vary the order as proposed, with the addition that the remuneration for fire safety compliance work must be reasonable.

Costs

104. Rather than hear oral submissions on whether the Applicant's costs of the proceedings were recoverable in the service charge, we made directions providing for the Applicant to submit written submissions on the subject within 14 days, and for the Respondent to respond to them within the same time limit. These directions were substantively adhered to by the parties (if any minor extension of time is necessary, as it was suggested might be the case by Mr Lederman, we grant it).

105. Mr Maunder Taylor makes submissions on the basis that the costs are recoverable under the management order, under the lease, or an order under section 24 of the 1987 Act.

106. First, paragraph 1(f) of the management order applied to the proceedings. That sub-paragraph confers on Mr Maunder Taylor

> The power in his own name or on behalf of the Respondent to bring, defend or continue any legal action or other legal proceedings in connection with the Leases of the Premises including but not limited to proceedings against any Lessee in respect of arrears of service charges or other monies due under the Leases and to make any arrangement or compromise on behalf of the Respondent. The Manager shall be entitled to an indemnity for both his own costs reasonably incurred and for any adverse costs order out of the service charge account"

107. Mr Maunder Taylor argues that the application was necessary because he was unable to complete the repairs and maintenance as a result of the non-payment of service charges by the Respondent, Eperstein and Le Petit Sud Ltd.

108. Secondly, Mr Maunder Taylor argues that under paragraph 13 of the order, he has liberty to apply for further directions (section 24(4) of the 1987 Act).

109. Thirdly under the management order, he is entitled under paragraph 7 to remuneration. Paragraph 7(c) reads

> The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges) in accordance with the Schedule of Functions and Services attached.

110. Accordingly, he argues that he is entitled to an hourly rate of £200 plus VAT.

111. As to the leases, Mr Maunder Taylor argues that his costs are recoverable under the third schedule, part II, paragraph 14 of the leases to the residential leases, and clause 8.1 of the lease of Unit D (but not the lease of Unit E, which has, he says, no relevant provision).

112. Both of these provisions follow detailed lists of the expenditures referable to the service charge. That in the residential leases specifies

> The carrying out of works or services of any kind whatsoever which the lessor may reasonably deem desirable or necessary for the purpose of maintaining or improving the services in the Building and the cost of any other services reasonably

> provided by the Lessor from time to time for the benefit of lessees in the Building or in the interests of good estate management.

113. Mr Maunder Taylor quotes the corresponding passage in the lease to Unit D (we do not have a copy of that lease in the papers) as follows:

> Any other service or amenity that the Landlord may in its reasonable discretion acting in accordance with the principles of good estate management provide for the benefit of the tenants and occupiers of the Property whether alone or together with the tenants and occupiers of the Building but always provided that the Tenant shall have no liability to contribute to the cost of heating, repairing, maintaining and renewing the interior passages and staircases of the Building or the costs of maintaining, repairing replacing or insuring the passenger lift service of the Building

114. The extension of his appointment, Mr Maunder Taylor argues, is desirable and necessary for the purpose of maintaining and improving the services of the building and is in the interests of good estate management, for the benefit of the tenants and other occupiers of the building. It therefor falls within these clauses.

115. In support, he cites *Canary Riverside PTE Ltd and others v Schilling and others* 2005 (LRX/26/2005, although we think that the judgment meant is that given the number LRX/65/2005), and *Assethold v Watts* [2014] UKUT 537 (LC), [2015] L. & T.R. 15; *Arnold v Britton* (citing [2013] EWCA Civ 902, [2013] L. & T.R. 24; and we note also [2015] UKSC 36, [2015] A.C. 1619) and *Francis v Philips* [2014] EWCA Civ 1395 on principles of construction.

116. Mr Lederman contests all three bases.

117. As a preliminary, he argues that the Respondent is interested in the question, as Mr Maunder Taylor asserts (which the Respondent resists) that it is liable for service charge contributions for Unit 6/C and Unit E.

118. As to Mr Maunder Taylor's first argument in respect of the leases, Mr Lederman submits that extending the order is not "legal action or other legal proceedings in connection with the leases" of the kind contemplated. It conflates the issues of whether the Applicant should be the manager for the next three years with the needs of the building.

119. Rather, he says, the issue of insufficient funds raised through the service charge is contemplated by paragraph 13, an application for a direction. If paragraph 1(f) covered this application because of lack of funds, there would have been no need for the example of that situation given in paragraph 13 c.

120. As to Mr Maunder Taylor's second argument, this is an application to vary the order. It is not, and has not been presented as, an application for a direction.

121. Mr Lederman, in support of this contention, submits that the proceedings were adversarial, and repeats his argument that the application arises out of tactical manoeuvring by "the flat 2/3 entities".

122. The third submission, that relating to the right to remuneration, is also not appropriate, Mr Lederman argues. Mr Maunder Taylor referred to the hourly rate of £200, which is specified in (the second) paragraph 21 of the schedule to the order as appropriate for the "[t]he undertaking of further tasks which fall outside those duties described above…". The described duties are management services, arrangement and supervision of major works, insurance enquires and solicitors enquiries. (As Mr Lederman points out, there are two sets of paragraphs 18 to 20 in the schedule to the management order).

123. Extension of the order is not a "task" within the schedule to the order, and so remuneration is not payable under paragraph 7(c).

124. The cited provisions in the leases do not permit the charging of the costs of the current application to the service charge, either, Mr Lederman submits. It is, he argues, a hopelessly strained contention to argue that an application to extend the order was a "service" contemplated by the lease. In support of this contention, Mr Lederman cites paragraphs 15 to 23 of *Arnold v Britton* in the Supreme Court, paragraph 41 of *Assethold v Watts*, and paragraphs 51, 52 and 54 of *Kensquare v Boakye* [2022] [2021] EWCA Civ 1725, [2022] H.L.R. 26. The decision in *Canary Riverside* was in respect of a different lease, and did not assist the Applicant.

125. Mr Lederman also argues that the structure of the residential lease argues against Mr Maunder Taylor's interpretation. Paragraph 14, he says, was worded so as to deal with entirely separate issues, unrelated to management, which is dealt within paragraphs 8 to 12 of the part II of the third schedule.

126. We turn to our conclusions. In summary, we agree with Mr Maunder Taylor (at least in the result, if not with his argument) in respect of his submission in relation to the remuneration provisions of the management order; and, more tentatively, under the lease on an analogue with *Canary Riverside PTE Limited and others v Schilling* (LRX/65/2005).

127. We agree with Mr Lederman's submissions in relation to paragraph 1(f) of the management order, in that we do not consider that the application can properly be characterised as litigation "in connection

with the Leases". We also agree with Mr Lederman that it is too late for Mr Maunder Taylor to add an application for a direction to this variation application. As we explain, although we agree (tentatively) with Mr Maunder Taylor that the costs are recoverable under the lease, we reject his argument for that conclusion.

128. First, we consider the argument based on paragraph 7(c) of the management order.

129. That paragraph states that the remuneration should be "in accordance" with the management order's schedule. By referring to an hourly rate of £200, Mr Maunder Taylor is (as Mr Lederman asserts) clearly having recourse to paragraph (second) 21 of the schedule to the order, which is quoted above.

130. Mr Lederman argues that in paragraph (second) 21, in the phrase "further tasks which fall outside those duties described above" – the criterion for remuneration – the "duties described above" refers to the other the remuneration provisions above (paragraphs (second) 18 to 20).

131. We do not think this is a correct reading, even on the basis of the words in the paragraph taken on their own. Paragraphs (second) 18 to 20 do not described duties at all. They set out the fees and charges to be paid from the service charge to the manager. We think that the "above" in "duties described above" refers to the order as a whole, that is, to the foregoing parts of the order that do, in fact, describe duties, in the sections before that headed "fees". If the "above" had been limited to paragraphs (second) 18 to 20, in addition to not referring to "duties described", it would have limited the "above" to those paragraphs. Simply using the word "above" assumes a more expansive cross-reference.

132. If that is correct, then the remuneration describe in paragraph (second) 21 applies to things done outside the scope of the schedule altogether. That that is correct is reinforced by the use of the very general word "tasks" rather than "duties" (or indeed "functions"), which would limit the scope of the paragraph to the schedule.

133. But secondly, we think that the emphasis should be on the primary provision, that in clause 7(c). The manager is entitled to remuneration. Of course, that remuneration must be connected with his appointment or status as manager. Making an application for variation is, clearly, something done in connection with his position as manager. We doubt that, in general, for instance, a landlord would object to an application to bring the management order to an end before the stated end date being remunerated. It could not be in the interests of proper management of a property – the objective of any management order – that tasks such as applying for variations should be disincentivised by

requiring a manager to do it for free. That there could be "tasks" that did not fall within the schedule, but which could properly be taken by the manager must have been in contemplation of the Tribunal making (and subsequently varying) the order.

134. So that is the proper context for the interpretation of paragraph (second) 21. That context, and the use of the general terms we refer to above, further indicates that the paragraph is intended to bring in the widest set of tasks that can properly be undertaken by a manager.

135. In relation to the question of whether payment of the costs of the proceedings can be charged to the service charge under the lease, the case of *Canary Riverside PTE Limited and others v Schilling* is of importance. Both parties refer to the case (in Mr Maunder Taylor's case, the reference number to the pre-neutral citation judgment is to the separate judgment referred to by HHJ Rich as "the service charge application" (LRX/26/2005), rather than "the costs application" (LRX/65/2005), cited by Mr Lederman, which is the relevant judgment).

136. Mr Lederman is right that the lease in that case was different. The relevant clause listed, as part of the costs referable to the service charge, the following, under the heading "Management", the "proper and reasonable fees and disbursements of managing agents solicitors counsel surveyors … employed or retained by the Landlord for or in connection with the general overall management and administration and supervision of the Building".

137. However, HHJ Rich found that it was plainly right that the "incurring of fees in resisting an application to change the Manager of the Building is in connection with such management" (paragraph [13]). In this part of the judgment, stress is apparent on the "in connection with" element of the clause. However, this part of the judgment proceeds by way of a commentary on the reasoning of the FTT (which went one way, and then the other, and emphasised "connection"). A little later, the FTT, noting the hostile nature of litigation to appoint a manger, stated that it "is unlikely that a landlord's cost of defending, even successfully, a tenant's action for damages for breach of management covenants could be recovered … as a service charge incurred as in connection with management etc". That, HHJ Rich says, he is "is quite unable to understand". He goes on "Resisting such challenges is part of the ordinary cost of management" (paragraph [15]).

138. In this formulation, it does not appear that the "connected with" qualifier is doing any work. Such costs are "part of the ordinary cost of management", not merely "connected" therewith.

139. In the residential leases in this case (at least those – as noted above, we were not provided with copies of the other leases), part II of the third

schedule, listing expenditure referable to the service charge, includes at paragraph 8

> The procuring by the Lessor or the Lessor's surveyors of:
>
> (a) the general management of the Building …
>
> (c) the employment of staff for the purposes of or in any way connected with any of the matters mentioned in this Part of this schedule …
>
> so long as the same are in the interests of good estate management or the proper enjoyment and benefit of the Building

140. And paragraph 12

> The payment to any managing agents employed by the Lessor for the general management of the Building

141. As well as the general sweeper provision relied on by the Applicant at paragraph 14.

142. Taken together, these provisions appear to us to make perfectly adequate provision for the costs of – put generally – the management of the building to be referable to the service charge, as, indeed, we would expect. It seems to follow from the way it is put at paragraph [15] of the *Canary Riverside* costs application judgment, that that means that the costs of resisting the appointment of a manager could be put through the service charge.

143. Mr Maunder Taylor argues that, by analogue, that must mean that the cost of extending a management order is likewise referable to the service charge.

144. The point of the management order is give Mr Maunder Taylor "all such powers and rights as may be necessary and convenient in accordance with the Leases to carry out the management functions of the Respondent" (and there then follows the long list of matters to which this applies "in particular") (paragraph 1).

145. If, as it appears, "the management functions of the Respondent" would have included the question of who should be the manager (in the specific context of an appointment under section 24 of the 1987 Act), exercising the management functions would seem to include the same question, when the answer to that question was the opposite of that in *Canary Riverside*.

146. However, we reach this conclusion with some reservations. Mr Lederman cited the paragraphs in *Kensquare* (a case which reviewed a number of authorities on the issue) in which the Court of Appeal found that litigation costs were not referable to the service charge. In doing so, the Court explicitly contrasts litigation with management services,

rather than seeing litigation as part of management. In that case, the relevant paragraph referred to the "costs of employing such professional advisers and agents as shall be reasonably required in connection with the management of the building". That paragraph, the Court found,

> does not extend to litigation costs. While the reference to "professional advisers" is apt to apply to lawyers … As in *No 1 West India Quay (Residential) Ltd v East Tower Apartments Ltd* [2021] EWCA Civ 1119, [2022] H.L.R. 38 the focus is on management services rather than litigation and, to adapt words of Rix LJ which Lord Neuberger quoted in *Arnold v Britton*, a decision in favour of [the landlord] would involve "bring[ing] within the general words of a service charge clause" something "which does not clearly belong there".

147. We do not consider it to be the case that *Canary Riverside* and *Kensquare* are in conflict. Even if an emphasis on management *as opposed to* litigation in a clause will generally mean that legal costs are not recoverable under it (Kensquare), it may be that who should be the manager (in the context of section 24) falls within the concept of "management" rather than "litigation". The "who manages?" question can reasonably be seen as more central to the concept of management than litigation to recover service charges, or, or instance, to secure the boundary (as in *Geyfords v O'Sullivan* [2015] UKUT 683 (LC)). Nonetheless, it would be idle to suggest that there is no tension between the two.

148. We note that in the management order in this case, specific authority is given for the manager to engage in litigation, but we doubt that that assists with construing the extent of the concept of management in the lease.

149. We add that we not agree with Mr Maunder Taylor, that, taken alone, the sweeper clause in paragraph 14 of part II of the third schedule would have the effect for which he argued. The form of his argument was that that clause extended (fairly radically) the set of things that the landlord, and hence the manager, could do, over and above what was provided for in the remainder of part II of the third schedule. That is an approach to sweeper clauses that has not in general been favoured (see *Woodfall Landlord and Tenant* 7.174 for an overview). Our conclusion – somewhat tentative as it is – is based on the inclusion of these costs in the core concept of management.

150. Our order varying the order as varied in 2020 is appended to this decision.

Rights of appeal

151. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the London regional office.

152. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

153. If the application is not made within the 28 day time limit, the application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

154. The application for permission to appeal must identify the decision of the Tribunal to which it relates, give the date, the property and the case number; state the grounds of appeal; and state the result the party making the application is seeking.

Name: Tribunal Judge Professor Richard Percival **Date:** 22 January 2024

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AW/LVM/2023/0008**
Property	**:**	**1 Palace Gate, London W8 5LS**
Applicants	**:**	**Michael Maunder Taylor FRICS FIRPM**
Representative	**:**	**In person**
Respondent	**:**	**(1) Winchester Park Limited (Landlord)** **(2) Various Leaseholders as per the application**
Representative	**:**	**Mr H Lederman of counsel**
Type of Application	**:**	**For a variation of a management order**
Tribunal Members	**:**	**Judge Prof R Percival** **Ms A Flynn MA MRICS**
Date	**:**	**22 January 2024**

ORDER

UPON the First-tier Tribunal having heard the parties and considered the documentary evidence on the Applicant's application for a further variation of the management order dated 26 July 2018 to extend the term of the appointment of the manager by a further three years, it is ordered:

1. In paragraph 1 of the order as amended on 23 July 2020, for the words "31 May 2023" substitute "22 January 2027".

2. In paragraph 21 of the schedule to the order, for the words "£7,880" substitute "£8,688"

3. After the second paragraph of the schedule to the order numbered 20, insert the following paragraph:

"25. An additional charge may be made in respect of work done to secure compliance with the Fire Safety Act 2021 and the Fire Safety (England) Regulations 2022 and associated regulatory provisions. The charge must be based on the time taken to undertake the work, provided that the amount is reasonable."

4. The numbering of the paragraphs of the order should be corrected so that there is a single continuous sequence of numbers, renumbering the second paragraphs numbered 18 to 20 accordingly.