FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CG/LAM/2023/0001**
Property	**:**	**St Mary's House, London Road, Sheffield S2 4LA**
Applicant	**:**	**Susan Sinclair**
Representative	**:**	**Trowers & Hamlins LLP** **Anthony Verdryn - Counsel**
Respondents	**:**	**Gunes Ata (trading as Noble Design and Build)**
Representative		**Ashfords** **Katie Grey - Counsel**
Type of Application	**:**	**Appointment of a Manager -Landlord and Tenant Act 1987– Section 24(1) Landlord & Tenant Act 1985-Section 20C**
Tribunal Members	**:**	**Tribunal Judge J.E. Oliver** **Tribunal Member S.A. Kendall**
Date of Determination	**:**	**31st January and 28th February 2024**
Date of Decision	**:**	**26th March 2024**

DECISION

Decision

1. The Tribunal finds it just and convenient to appoint the Applicant's manager, Mr Harvey Mills, as the Tribunal appointed manager from 1st May 2024.
2. The Applicant is to file a draft management order for approval by the Tribunal within 14 days of the receipt of this decision.
3. An order is made pursuant to s20C of the 1985 Act.

Application

4. This is an application, dated 10th February 2023, for Mr Harvey Mills of Cloud Student Homes to be appointed as the Tribunal appointed manager of St Mary's House, London Road, Sheffield ("the Property"), pursuant to section 24(1) of the Landlord & Tenant Act 1987 ("the 1987 Act"). There is a further application for an order pursuant to section 20C of the Landlord & Tenant Act 1985 ("the 1985 Act").
5. The Applicant, Susan Sinclair, the leaseholder of 115 St Mary's House. The Respondent to the application is Gunes Ata, trading as Noble Design and Build, who is the current manager and freeholder of the Property.
6. The Tribunal issued directions on 16th March 2023, providing for the filing of statements, bundles and provision for a hearing. The parties were directed to adhere to the requirements set out in the Practice Statement: Appointment of Managers under Section 24 of the Landlord & Tenant Act 1987 |Courts and Tribunals Judiciary.
7. A Video Case Management hearing was held on 6th October 2023 to deal with further issues arising from the application, including provision for other parties to join the application as Co-Joiners, rather than Co-Applicants. This was done to avoid additional fees. The Co-Joiners are a further 64 leaseholders in the Property.
8. The application was heard on 31st January 2024 at Sheffield Magistrates Court. The Applicant was represented by Anthony Verdryn, Counsel and the Respondent by Katie Grey, Counsel. The Applicant attended but did not participate in the hearing. The Respondent gave evidence, as did the proposed manager, Harvey Mills and other witnesses on behalf of the Applicant.
9. The Tribunal did not inspect the Property and judgement was reserved. The Applicant agreed to file with the Tribunal a copy of Cloud's professional indemnity insurance, the copy provided in the bundle being out of date at the time of the hearing.
10. At the conclusion of the hearing, it was agreed the Applicant would produce evidence of Professional Indemnity Insurance, the certificate provided being out of date at the time of the hearing. The Applicant subsequently provided an Employers Liability Certificate dated 29th September 2023 to 28th September 2024. The Respondent stated this did not specifically refer to Professional Indemnity Insurance. A further copy certificate was produced identifying the cover provided. This was for Employer's Liability in the sum of £10,000,000, Public Liability and Products Liability each in the sum of £5,000,000. This certificate was for the period 29th September to 20th October 2023 and thus it was not a current certificate.

Background

11. The Property is a former office block converted into residential accommodation by the Respondent in or around 2014. Conditional planning permission was granted for the development, that the residential element of the Property was to be used only as student accommodation.
12. The Property comprises four floors with commercial units and plant rooms on the ground floor and the upper three floors providing the residential accommodation. This comprises 6 self-contained flats, each having an en-suite and cooking facilities. The remaining accommodation are 10 "cluster flats" having 6-10 bed-sits, each with an en-suite bathroom but sharing cooking and lounge facilities. Each cluster has its own entrance door.
13. The Tribunal was advised that when each of the individual properties were sold, the lessees entered into a separate management and lettings agreements with the Respondent t/a Noble Design and Build ("Noble") relating to their individual properties. There was a further agreement relating to a "buy back" of those properties within 3 years, should the Respondent exercise this option. This didn't happen and ownership remained with the lessees.
14. Issues arose regarding the maintenance of the Property and the separate lettings and maintenance agreements. In October 2020 the Applicant and 62 other leaseholders incorporated St Marys House Investors Ltd ("the Company") and in October 2021 it signed a new management agreement with the Respondent. This allowed it to end the agreement with the Respondent which it did in May 2022. On 1st July 2022 the Company entered into new management and letting agreements with Cloud Student Homes ("Cloud").
15. The Applicant states there is a separate dispute with the Respondent with regarding the handing over of keys to Cloud that has resulted in lost revenue and which is a separate issue to the matter before the Tribunal.
16. The Applicant further states the Respondent has failed in his obligations in respect of the Property. The allegations of poor management include a failure to produce accounts relating to the Service Charge, deducting the Service Charge from the lettings income without any explanation, failing to carry out adequate maintenance that has resulted in water ingress, a rat infestation , lifts that have been out of order for some time and unauthorised people entering the Property.
17. The Respondent disputes the allegations but further maintains the failure by the lessees to pay the service Charge has resulted in an inability to carry out all the required maintenance.
18. The Applicant advises the lessees of the Property have paid a sum in lieu of service charge to Cloud to enable it to discharge invoices due to the Respondent, although it is said none have been issued.
19. The Applicant further states there has been a failure on behalf of the Respondent/Noble to provide any service charge accounts, nor have any budgets been produced since July 2022. There is no transparency in respect of the charges, the Respondent deducting them from the rental income received. All that is then received is a statement to say whether there is a deficit owed. The services are provided by another company wholly owned by the Respondent, FIX1ST and no detailed invoices are produced. Hence, it cannot be known whether those charges are reasonable or otherwise. A request for this information has been made, but with no response.

20. The Applicant has proposed that Harvey Mills of Cloud be appointed as manager for the Property. It is confirmed by the Applicant this appointment is for the whole of the residential accommodation but does not extend to the commercial premises. He is currently employed by other lessees of the Property in the letting of their properties. In accordance with the directions issued by the Tribunal he has filed information regarding his proposed appointment but has not produced a management plan.
21. Whilst the Respondent is the manager of the Property, the day-to-day management is undertaken by his daughter Jade Ata. On 23rd January 2024 the Respondent sought permission for Jade Ata to file a statement in response to the application and for her attendance at the hearing to be excused. The application requested she be allowed to attend remotely for personal reasons. The Applicant objected to the application on the basis there was insufficient time for any response prior to the hearing and it was out of time in pursuance of the Tribunal's directions. The Tribunal agreed and gave permission for Jade Ata to attend the hearing remotely, but only as an observer. Consequently, her evidence was not admitted.
22. On the day prior to the hearing, the Applicant made a further application to adduce additional evidence, this being a notification sent by Sheffield City Council to DAO Investments, the lessee of Flat 202 at the Property, of its intention to refuse the grant of a HMO licence for the flat. This refusal was said to be on the basis the Respondent was not a "fit and proper person" to hold the licence, nor to manage the flat due to various offences having been committed. It was said the same refusal was due to be issued in respect of all the properties let or managed by the Respondent or Noble. The tenancy agreements for the properties were said to be issued in either name.
23. In their notification the Council stated the licence holder is St Mary's House Management Ltd, the Respondent being its sole director and therefore under his control. It is closely associated with the Respondent for assessing its "Fit and Proper Persons" status pursuant to section 66(3)(b) of the Housing Act 2004. The Council further found the company was dormant at Companies House and had assets of £1 raising the issue of its financial capability of managing the premises. It further referred to convictions of the Respondent t/a Noble.
24. The convictions are said to be the following:
    (1) Landlord and Tenant Act s.30A relating to Print Works, Hodgson St, Sheffield. The Respondent t/a Noble pleaded guilty and was fined £750 with costs of £1400 and a victim surcharge of £75.
    (2) Landlord & Tenant Act 1985 s.21 relating to 314 St Mary's House, 11 London Road, Sheffield. The Respondent t/a Noble pleaded guilty and was fined £800 with costs of £862 and a victim surcharge of £320.
    (3) Article 27 of the Regulatory Reform (Fire Safety) Order 2005 relating to London Court, Beeley Road, Sheffield. South Yorkshire Fire and Rescue Service undertook a prosecution relating to a failure to provide information regarding cladding on the building. The matter was dealt with in the Respondent's absence and in respect of which no plea was entered. A fine of £1000 was imposed.
    (4) There were prosecutions by the Information Commissioner's Office on 2nd July 2018 for operating CCTV systems across Sheffield and for which a fine was imposed of £2500 with costs of £364.08 and a victim surcharge of £170.

(5) on 14th June 2023 the Council had served the Respondent t/a Noble with financial penalties under s249a of the Housing Act 2009 for 145 breaches under regulations 4 and 7 of the Management of Houses in Multiple Occupation (England) Regulations 2006 in respect of the Property.

25. The Tribunal determined the issue whether the notification from the Council should be admitted in evidence would be dealt with as a preliminary issue at the hearing.

The Law

26. Section 24 of the 1987 Act provides:

(1) "*The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies –*

(a) such functions in connection with the management of the premises, or

(b) such functions of a receiver,

or both, as the tribunal thinks fit.

(2) *The appropriate tribunal may only make an order under this section in the following circumstances, namely-*

(a) Where the tribunal is satisfied-

(i) That any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligations but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii) ….

(iii) that it is just and convenient to make the order in all the circumstances of the case

[ab] where the tribunal is satisfied-

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case:

[aba] where the tribunal is satisfied-

(i) That unreasonable variable administration charges have been made, or are proposed or likely to be made; and

(ii) That it is just and convenient to make the order in all the circumstances of the case:

[abb] where the tribunal is satisfied-

(i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and

(ii) that it is just and convenient to make an order in all the circumstances of the case;

[ac] where the tribunal is satisfied-

(i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

(ii) that it is just and convenient to make the order in all the circumstances of the case or

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

Hearing and Submissions

27. The Tribunal firstly considered the application to admit the Notice served by Sheffield City Council which was granted. This was upon the basis there had been no earlier opportunity for it to be disclosed having only been issued on 26th January 2024.
28. The Applicant sought permission to adduce a Service Charge Schedule for 2021 that had been prepared by the Applicant and which had been disclosed to the Respondent but had been omitted from the agreed bundle. In addition, permission was sought to admit evidence from the accounting system used by the Respondent in the management of the Property, known as Blockman. All information regarding insurance, service charges and ground rent was available to the lessees. This had not been previously disclosed. The Tribunal granted the application relating to the service charge schedule, this having already been disclosed. It did not grant the application for disclosure from Blockman.
29. Miss Grey advised the Tribunal there was an appeal lodged with the Tribunal in respect of the financial penalty notice, dated 14th June 2023, for the breach of Management Regulations and no determination had yet been made. Further, there was an intention to appeal the Council's decision to refuse the granting of the HMO licences.
30. The parties raised several issues relating to the application.

31. The first issue was whether the individual flats within the Property are flats within the meaning of s.60 of the 1987 Act. The Respondent argued the Property is student accommodation with commercial units. The self-contained flats are flats as defined within s.60, but the cluster flats are not. They are individual bed-sits set within a cluster of differing sizes on 3 floors, each having an en-suite but with communal cooking and lounge facilities. In this the Tribunal was referred to **JLK v Ezekwe** [2017] UKUT 277 (LC) and **Q Studios (Stoke) RTM Co Ltd v Premier Ground Rents No 6 Ltd** [2020] UKUT 197 (LC).
32. The Applicant argued the accommodation are flats, each cluster being behind its own front, lockable door. Each bed-sit is separately licensed as a HMO. The Tribunal was referred to **Farndale Court Freehold Ltd v G & O Rents Ltd** Unreported 7 October 2011 Central London County Court HH Judge Cowell and cited in Services Charges and Management. Consequently, there are 18 flats, being 12 cluster flats and 6 self-contained flats.
33. A further issue arose regarding the Preliminary Notice ("the Notice") dated 23rd December 2022 and whether this was adequate to satisfy the requirements of the grounds contained within s 24(2) of the 1987 Act. In total, 9 grounds were cited as follows:
    1. The applicants have no confidence in the proper management of St Mary's House by Gunes Ata, trading as Noble Design and Build and Ms Jade Ata and St Mary's House Management Ltd.
    2. The Landlord and his Management Company are in breach of obligation owed to the leaseholders under their leases.
    3. The Landlord and his Management Company are in breach of obligation owed to the leaseholders under the terms of the Management Agreement.
    4. The Landlord has made unreasonable service charges 2021 and 2022 and provided no budget for 2022 or 2023.
    5. Suspected breach of section 42 of the Landlord and Tenant Act 1985; Service Charges and Reserve Funds.
    6. The Manager, Ms Jade Ata, Noble Design and Gunes Ata, Trading as Noble Design and Build, are in breach of the Code of Practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993, the Service Charge Residential Management Code of the Royal Institution of Chartered Surveyors Code of Practice; RCIS.
    7. The Landlord denies the rights of St Mary's House leaseholders in respect of section 21 and 22 of the Landlord and Tenant Act 1985; Service Charges, accounts and supporting documents.
    8. Breach of the Environmental Protection Act 1990.
    9. Other circumstances exist which make it just and convenient to appoint a manager.
34. The Respondent argued the grounds referred to 1, 3, 5, and 8 were not valid grounds. Ground 2, as more fully pleaded elsewhere, referred to the tenant's obligations under the lease and not of the Respondent. Ground 4 alleges unreasonable service charges but no application has been brought pursuant to section 27A of the 1985 Act to establish whether any of the service charges are unreasonable. In addition, there are no specific examples of those charges that are said to be unreasonable.

35. The Respondent further argued that Ground 6, relating to the RICS code of practice, refers to the Respondent's failure to respond to a request to inspect accounts and receipts. There is only an obligation to do this once a written summary of costs has been provided and the Applicant has confirmed that none has been given. Hence, this is also not a valid ground. Further, the time given in the Notice for remedy was 14 days and it was served immediately before the Xmas holidays. The time frame for compliance was unreasonable.
36. The Applicant asked the Tribunal to consider the fact that until very recently she had been acting as a litigant in person. There is no prescribed form for the Notice and provided a ground is made out, the Notice is sufficient. The Applicant submitted that for all the alleged breaches referred to within the Notice it remained there was sufficient evidence for it to be "just and reasonable" for a manager to be appointed. The Tribunal was referred to s.24(b) of the 1987 where there are "other circumstances" where it is just and convenient to do so.
37. The Applicant referred the Tribunal to the conduct of the Respondent in his obligations under the Leases.
38. Under Section 4 of the Applicant's Lease there is an obligation to carry out repairs, maintenance, cleaning and heating. It was said the lift has not been working for 18-24 months. The common parts are not cleaned regularly and are "unkempt". The central heating system is unreliable and there have been episodes of rat infestation. There was also a complaint a homeless person had entered the Property through a failure of the entrance door and the police had to be called.
39. The Respondent confirmed his daughter, Jade Atta, was responsible for the lettings and the day-to-day management of the Property. His knowledge was therefore limited.
40. He confirmed there had been a reduction in the provision of services at the Property. This was due to the failure of the lessees, who had appointed Cloud to manage their properties, to pay their service charge. The lack of income is significant. There are only 38 other leaseholders who are not part of the current application. He advised when Noble was in receipt of the service charge payments the common parts of the Property and cluster flats would be cleaned twice per week. Since the reduction in income only the common parts are cleaned. He agreed the lifts have not been operational since 2022 and confirmed that no charge had been made through the service charge for the lifts since that time. Prior to that FIX1ST repaired the lifts although it could not purchase parts for them. In respect of the rat infestation, pest control had been charged within the service charge. However, again, when payment of the service charge was not made, this service was reduced. The Applicant advised that when the Council attended the premises they found visible stains, rat excrement and places where the rats entered the Property. Cloud had subsequently arranged for vermin control. The Respondent stated that another consequence of the reduction in service charge income was that the walk round service had been significantly reduced.

41. The Applicant stated the heating system failed between Xmas and New Year 2022 and this was not resolved by April 2023. Sheffield City Council became involved resulting in an Improvement Notice being served in April 2023. This addressed the issue of an inadequate heating system in addition to the pest control. The Respondent advised an independent report found the heating system to be adequate although an air lock had been found. The Council had found an issue with an external soil pipe; this had not been picked up due to the reduced walk round service. The Respondent stated the Improvement Notice had been fully complied with.
42. The Applicant maintained there is no property insurance in place; Blockman has been checked and none is shown on that system. Mr Oates, the lessee of Flat 202, gave evidence he had checked the system immediately prior to the hearing and no evidence of the insurance policy was shown. The Respondent confirmed property insurance with AVIVA was in place. He could not explain its absence on Blockman; he did not operate the system.
43. With regard to the issue of a homeless person accessing the Property, the Respondent did not accept this was his responsibility; he could not control tenants leaving the external doors open.
44. The Applicant referred the Tribunal to the Respondent's failure to produce service charge statements, accounts and budgets and the unreasonableness of the service charge. The Respondent maintained that under the terms of the leases for the Properties, there is no obligation to produce statements and accounts, the relevant provisions of the leases providing at paragraph 1.1 and 1.2 of schedule 4 as follows:

    "*i An advance yearly payment which shall equal such sum as may be notified to the Tenant by the Landlord or the Surveyor from time to time whether before or after the commencement of the relevant Ser vice Charge Year…payable by equal quarterly payments in advance on the usual quarter days in every year… (and so that of the sum of the yearly advance payment shall not be notified by the beginning of the Service Charge Year the Tenant shall pay on the usual quarter day a quarter of the yearly advance payment notified as being payable for the preceding Service Charge Year subject to adjustment upon the Landlord notifying the Tenant of the yearly advance payment for the current Service Charge Year)"*

    ii A further payment within 14 days of the Landlords written demand equal to the excess of the Service Charge for the relevant Service Charge Year over the yearly advance payment for such year provided that if the amount of the yearly advance payment shall exceed the Service Charge for the same year the difference between the sum payable and the sum paid shall be credited towards the yearly advance payment for the next following Service Charge Year and a true copy of the statement of the Service Charge certified as such by the Surveyor or the Landlord, (together with a breakdown of the heads of expenses comprised in it) shall in the absence of manifest error be conclusive evidence of the amount of the Service Charge or the relevant Service Charge (but the Landlord following a written request made within two months of the date of sending of such statement to the Tenant shall permit the Tenant on reasonable notice to inspect vouchers invoices and receipts evidencing the calculation of the Service Charge)"

The Respondent further argued that for the Applicant to maintain the service charges were unreasonable, an application should have been made pursuant to section 27A of the 1985 Act.

45. The Applicant referred the Tribunal to the fact that the budget for 2022 was only produced on 10th July 2023 ,after the current application was filed and no budget has been produced for 2023. The Notice set out those matters that were capable of remedy and included the production of accounts for 2019-21, but they had never been produced. The invoices that were made available often covered more that the Property, making it difficult to know the apportionment of the charges. Further, the invoices were mostly from FIX1ST without any detail regarding time spent, such that it could not be known whether the charges were reasonable or otherwise.
46. The Applicant further referred to an occasion when ground rent demands had been sent out for the wrong amount. The Respondent accepted this had been an error and the excess had been repaid.
47. The Respondent gave evidence that there was no evidence to support the allegations the service charges were unreasonable. With regard to the failure to produce a budget for 2023, this could not be done on Blockman until the previous financial year had been closed down. He could not explain why this had not been done since he did not operate the system. The Respondent was also unable to confirm whether the accounts holding the service charge income were held in trust or why the service charge demands were not accompanied by a Summary of Rights and Obligations. Those matters were not within his knowledge and would be dealt with by his accounting team.
48. The Applicant referred the Tribunal to the Respondent's conduct. It was alleged he had behaved in a threatening manner to Blaine Dalton, an assistant manager for Cloud. A witness statement was given by Thair Rashid in support of this and who attended the hearing. The Respondent denied the incident had taken place.
49. The Respondent submitted that the lessees' failure to pay their service charges had resulted in a substantial deficit that, at the time of the hearing, amounted to approximately £300,000. Despite this, he had undertaken repairs that had been referred to, including the front door and the heating system.
50. Mr Mills, the proposed manager, attended the hearing. In response to the Tribunal's directions, he had filed a statement setting out his experience and qualifications and this was accompanied by written responses to the Tribunal's Requirements as set out in the Practice Statement. A Management Plan was not produced to the Tribunal. He confirmed he had no personal experience of being a Tribunal appointed manager.
51. In his written statement he confirmed Cloud deals with "*a wide portfolio of 23 properties and 3224 units within the Block Management portfolio, with properties ranging from 505 to 37 units, cluster properties and to individual properties".*
52. Mr Mills is a director of Cloud, based day to day at the Head Office in Salisbury and is the appointed lettings manager for those properties managed by the Company. The Respondent asserted this appointment would create a conflict of interest should he also be appointed as the manager of the Property. Further, Mr Mills was experienced as a lettings manager and not as a property manager.

53. Mr Mills stated he understood the obligations of a property manager and those of a lettings manager and the difference in their roles. There was some crossover between the roles. He confirmed his understanding of the fees that would be paid to him by the lessees as the property manager as opposed to those paid for lettings. The latter was a separate item and related to the individual rooms and entertainment that was provided.
54. Mr Mills confirmed Cloud held monies on behalf of the lessees that had been paid in lieu of the service charge due to the Respondent, the sum being approximately £16000. It was held as agents for the leaseholders in an account designated "St Mary's House". He advised some of the monies received had been expended at the request of the lessees. He was not aware of the exact amounts that had been sent to cover expenses, nor was he aware of details of the service charge arrears due to the Respondent.
55. He confirmed if he was appointed as manager he would undertake a survey of the Property and then prepare a schedule of works. He had visited the Property the day prior to the hearing and was aware there was work that was urgently required, for example water ingress and the repairs to the lifts needed to be remedied. He was therefore not able to immediately confirm the extent of the work required but could provide a detailed plan within 3 months of his appointment.
56. When questioned about any potential conflict of interest, Mr Mills advised that he did not foresee any issues. Mr Verdryn, Counsel, proposed that should Mr Mills be appointed a provision could be made within the Management Order for Mr Mills to resign as the lettings manager of a flat within the Property where any conflict arose.
57. Mr Mills confirmed his charges for acting as a Tribunal appointed manager would be £180 per unit per year.

Reasons

Appointment of Manager

58. The Tribunal considered the various issues raised by the parties.
59. The Respondent had noted the application was only made by one lessee. The requirement of s.21(4) of the 1987 Act is that the application is made jointly by tenants of 2 or more flats if they are entitled to do so and in respect of 2 or more flats. The Tribunal noted that whilst there was only 1 applicant, 64 other leaseholders had been co-joined to the application. This had been done as an alternative to them being joined as Co-Applicants due to the additional fees that would have arisen. The Tribunal accepted this was an application by 65 leaseholders in total and the requirements of s.21(4) had been met.
60. The second issue was whether the flats of those leaseholders fell within the definition of flats as contained within section 60 of the 1987 Act. This was specifically in relation to the cluster flats. The Applicant had referred the Tribunal to **JLK Ezekwe** and **Q Studios (Stoke) RTM Co Ltd v Premier Ground Rents No 6 Ltd.** In both these cases the flats related to student accommodation, as in this case. In the former each of the cluster flats, comprised 5 units, shared a communal kitchen, living area and, for some, communal showers and W.C. on each floor. Martin Roger QC said:

"*the tenant of each of the units has the right to share a kitchen, lounge, shower and w.c. with every other tenant on the same floor Can it then be said that the tenant is the tenant of a part of the building which is occupied or intended to be occupied as a separate dwelling?...The bed-sitting room plus the right to use the communal space will not satisfy the requirement because the tenant is not the tenant of the whole of that accommodation, but only of part of it; the bed-sitting room itself will not do, because it is not occupied as the tenant's dwelling, but only as part of it.*"

In the latter case, the studio flats also included cooking facilities and were therefore flats.

61. The Applicant referred the Tribunal to an unreported case, **Farndale Court Freehold Ltd v G & O Rents Ltd** cited in Services Charges and Management 5th Edition. Here, it was said that a "*hub flat (i.e a set of bedsit type rooms with a shared kitchen but which are as a group separate from the rest of the building) can be a flat*".
62. The Tribunal noted the cluster flats comprised of bed-sits each with an en-suite, the communal facilities being the cooking and lounge area. The distinction with **JLK Ezekwe** was that each cluster flat is behind its own lockable front door. The Tribunal therefore finds this difference supports the cluster flats being flats within the definition of section 60 of the 1987 Act as set out in **Farndale Court.** The Tribunal also noted each of the bed sits had an individual HMO licence. If there were to be any doubt upon this point the Tribunal noted it would have the ability to extend the appointment to the bed-sits pursuant to section 24(2B)(3) of the 1987 Act.
63. The third issue relates to the deficiency of the Notice dated 23rd December 2022. The Tribunal accepted the Notice had been prepared without the benefit of legal advice and that was a matter relevant in determining the validity of the Notice. There is no prescribed form for the Notice. It accepted those grounds numbered 1,3 and 5 appear to relate to the management of the letting, rather than the management of the Property. The Tribunal further accepted it was difficult to assess whether the service charges were unreasonable due to the lack of information provided by the Applicant. It would have been prudent for the Applicant to seek a determination pursuant to s.27A of the 1985 Act when relying upon this ground prior to the service of the Notice. The Respondent had submitted that Ground 2, in the main, refers to breaches of the tenant's obligations under the leases. The Tribunal does not accept this, the ground stated being "*Landlord and his Management Company are in breach of obligation owed to leaseholders under their leases*". This does fall within s.24(2)(a)(i) and is therefore a valid ground upon which the Tribunal can make a determination.
64. The Respondent argued the Tribunal should not consider issues relating to the breaches of obligation to repair and maintain the Property since this had not been included within the Notice. The Tribunal finds this issue is one which falls with Ground 2 referred to above and is therefore to be considered.

65. It was also argued it was unreasonable to specify the period for remedy to be 14 days when the Notice was dated 23rd December 2022. Here, the Tribunal notes the submissions made by the Applicant that even though only 14 days were provided for within the Notice, no attempt to remedy the grounds had been made before the application was made in April 2023. The Tribunal does not find the 14-day notice period over the Xmas holidays was a detriment to the Respondent.
66. The fourth issue was whether the allegations against the Respondent's conduct were proved and sufficient to justify the appointment of a manager.
67. The Tribunal noted the allegations regarding the Respondent's failure to maintain the Property, most notably the failure of the lift, heating system, rat infestation and water ingress. The Respondent did not deny these failures and only appeared to take remedial action when an Improvement Notice was served by Sheffield City Council. The Tribunal noted the Respondent's argument that due to the failure of the members of the Company to pay their service charges there were no monies with which to maintain the Property. The lift remains inoperable. This demonstrates the parties have effectively reached an impasse. There are 65 leaseholders to the application, leaving 38 leaseholders paying their service charges to the Respondent. It appears, on this basis, there will continue to be issues between the parties that , potentially causing a shortfall in income that will make the ongoing maintenance and management of the Property untenable.
68. The Tribunal considered the other allegations raised against the Respondent. It noted the leaseholders had sought information regarding the service charges by make a request pursuant to s.21 of the 1985 Act, but without success. The Tribunal noted the Respondent had pleaded guilty to such an offence in respect of 314 St Mary's House.
69. The Tribunal further noted the Respondent's other convictions in which no appeals had been filed. Whilst, in giving evidence, the Respondent had said he had just paid the fines without challenging the offences, the Tribunal considered them to be relevant.
70. It was said the leases do not provide for the provision of service charge accounts or budgets. However, the Tribunal finds there is a lack of transparency in the service charges made by the Respondent. The demands lack any information upon which the lessees can determine what is being charged for. This is compounded by the lack of detail in the invoices provided by FIX1ST, a company owned by the Respondent and which carries out the majority of work at the Property.
71. In his evidence the Respondent maintained that all the relevant information relating to the Property could be found on Blockman by the leaseholders and yet he could not explain why the current property insurance could not be seen on the system. He advised the budget for 2023 could not be processed because the 2022 financial year had not been closed down. There was no explanation as to why this was. The Respondent stated more than once during his evidence that he did not know how the system worked. The Tribunal found it of concern that in early 2024 the system that was designed to keep the leaseholders informed of any matters relating to the Property was not current.

72. The Tribunal noted the statement of Mr Rashid relating to the Respondent's conduct but did not make any finding in respect of it. This was upon the basis Mr Rashid had not witnessed the actual incident.
73. In taking into account all these matters and in making its determination regarding the appointment of a manager, the Tribunal finds the requirements of s 24(2)(a)(1) are met and it is "just and convenient" to make an appointment under s24(2)(b).
74. The appointment of Mr Mills as the Tribunal appointed manager is confirmed. Whilst it considered the significant criticisms of his proposed appointment by the Respondent, the Tribunal noted he had the support of 65 leaseholders. He is a director of a firm that has experience in property management as well as in the lettings market and therefore has significant knowledge despite never having previously acted as a Tribunal appointed manager. The Tribunal considered the proposed level of fees to be reasonable. His proposed timetable to enable him to report on the condition of the Property appeared realistic.
75. The Tribunal is therefore satisfied that it is just and convenient to appoint Mr Mills as the Tribunal appointed manager for a term of 3 years. This term would allow time to resolve the outstanding repair liabilities and other issues relating to the service charges such to then return the management to an external property manager or management company.
76. The Tribunal considered the issue relating to the production of the Professional Indemnity Insurance, as referred to above. It noted that whilst the certificate providing details of the insurance was out of date, there was evidence of a current certificate; they both had the same policy number. The Tribunal was therefore satisfied Cloud has the necessary insurance provision.

S.20C application

77. The Applicant seeks an order preventing the Respondent from recovering any costs relating to these proceedings through the service charge under s.20C of the 1986 Act.
78. In the light of its decision upon the application, the Tribunal considers it just and equitable for such an order to be made.

Tribunal Judge
26 March 2024