



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

<b>Case reference</b>	<b>: MAN/ooCH/LAM/2023/0005</b>
<b>Property</b>	<b>: 1 to 26 Bramwell Court, Derwentwater Road, Gateshead, NE8 2SB</b>
<b>Applicant</b>	<b>: Tony Ng</b>
<b>Representative</b>	<b>: Kingston Property Services Ltd</b>
<b>Respondent</b>	<b>: Adriatic Land 3 Limited</b>
<b>Representative</b>	<b>: HomeGround Management Ltd</b>
<b>Type of application</b>	<b>: Landlord and Tenant Act 1987 – Section 24 (Appointment of a Manager)</b>
<b>Manager to be appointed</b>	<b>: Carly Waller</b>
<b>Tribunal members</b>	<b>: Tribunal Judge L. F. McLean Tribunal Member Mr J. Fraser FRICS</b>
<b>Date of hearing</b>	<b>: 27<sup>th</sup> March 2024</b>
<b>Hearing venue</b>	<b>: HMCTS Video Hearing Service</b>
<b>Date of decision</b>	<b>: 9<sup>th</sup> May 2024</b>

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal declines to make an order dispensing with the requirement to serve a notice under Section 22 of the Landlord and Tenant Act 1987.**
- (2) Pursuant to Section 24 of the Landlord and Tenant Act 1987, the Tribunal proposes to make an order in the terms set out in the attached Appendix, appointing Carly Waller as Manager in respect of 1 to 26 Bramwell Court, Derwentwater Road, Gateshead, NE8 2SB (“the Property”).**
- (3) A copy of this Decision shall be sent to the Manager by the Tribunal.**
- (4) The Manager shall, within 14 days of the date of the Tribunal sending this Decision to her, (A) send a copy of this Decision (including the Appendix) to each of the long leaseholders of the Property, and (B) write to the Tribunal to confirm that this has been done.**
- (5) Any long leaseholder of the Property may, within 14 days of being served with a copy of this Decision, apply to be joined as a party to proceedings if they so wish.**
- (6) Any person applying to be joined as a party to proceedings under paragraph (5) above may, at the same time and if they so wish, apply for another direction amending, suspending or setting aside this Decision. Any such application must be made in writing and must state the reason(s) for making it.**
- (7) Any party (or any person who has applied to be joined to proceedings) may, by no later than 35 days after the date of the Tribunal sending this Decision to the Manager, make representations regarding the terms of the draft order attached. If no representations are received by the Tribunal in that time, the Tribunal shall proceed to make the order final.**

## **REASONS**

### **The application**

1. The Applicant has applied for an order to appoint a manager pursuant to s.24 of the Landlord and Tenant Act 1987 in respect of the Property. This application was not opposed by the Respondent, whose only observation was that it was the responsibility of the Respondent for the placing of insurance affecting the Property and so this function should not fall within the remit of any Tribunal-appointed manager.
2. The Applicant is also seeking an order to dispense with the requirement to serve a notice under Section 22 of the Act. The Respondent had indicated its willingness to consent to such an order.

### **Background**

3. The Property is a purpose-built block of flats containing 25 residential apartments over several storeys, and associated parking spaces.
4. The Applicant is a tenant under a long lease of apartment number 25 of the Property.
5. The Respondent is the current owner of the freehold title to the Property. When the Property was first built, a management company (known as Bramwell Court Residents Association Limited) was incorporated specifically to undertake the management duties of the Property in accordance with the terms of the tripartite leases entered into between the original landlord and the leaseholders, including essential maintenance and repairs. Bramwell Court Residents Association Limited was dissolved in February 2013, leaving no legal means of ensuring that the Property would be maintained in a safe condition.
6. It appears that steps were taken to form a new residents management company known as Bramwell Court Residents Association (2013) Limited (with a registration number 8840376 at Companies House). Some later leases of dwellings within the Property referred to this new company, but it held no official legal status in relation to any leases which had already been granted and which referred to the old management company. In any case, it too has been dissolved – in January 2018.
7. There is now another new residents management company in existence, also known as Bramwell Court Residents Association (2013) Limited (but with a registration number 11545809 at Companies House), and of which the Applicant is a director. This latest company holds no official legal status in relation to any of the leases. Even so, it appears to have been acting as a *de facto* resident management company for some time, and has appointed Kingston Property Services Limited to act as its managing agent for day-to-day business.

8. The leases granted of the dwellings within the Property do not, generally, make provision for the Respondent or any other party to “step in” and discharge the essential property management functions in relation to the Property if the original management company is dissolved. It has been explained in evidence before the Tribunal that there has been some concern about the ability of Bramwell Court Residents Association (2013) Limited, Kingston Property Services Limited or the Respondent to incur major expenditure and be entitled to reimbursement by the leaseholders. An application was previously made to the Tribunal for variation of all of the leases of the Property, pursuant to the Landlord and Tenant Act 1987, to replace any references to Bramwell Court Residents Association (2013) Limited with references to Bramwell Court Residents Association (2013) Limited instead. However, that application was rejected by the Tribunal on the grounds that it was not an appropriate use of that legislation.
9. The current application for an appointment of a manager (which originally proposed “Kingston Property Management Limited”) was made on 19<sup>th</sup> July 2023 and initial directions were given by a legal officer of the Tribunal on 6<sup>th</sup> December 2023 for the preparation of the Applicant’s statement of case.
10. The matter was then listed for hearing by way of video conference on 27<sup>th</sup> March 2024. Before the hearing, the members of the Tribunal reviewed the application papers so as to identify any potential matters which may have to be dealt with. The Tribunal gave further directions on 15<sup>th</sup> February 2024 which sought to deal with the following key issues:-
  - a. What power (if any) the Tribunal had to grant dispensation from the Section 22 requirement in the circumstances;
  - b. The identity of the proposed manager and their professional credentials; and
  - c. Further details of a management plan for the Property.
11. The Applicant adduced evidence that the long leaseholders of the Property had been informed in writing, by letter dated 14<sup>th</sup> July 2023, of the intention to make the present application, albeit that they were not named as additional Respondents when the present application was made.

### **Grounds of the application**

12. The Applicant’s grounds of the application were, in summary:-
  - a. The Property requires the appointment of a manager given the absence of any party which is legally obliged to carry out essential repairs and maintenance and/or receive payment for having done the same;
  - b. Carly Waller is a suitable person to be appointed, especially given her employer’s existing *de facto* management of the Property.

## **Issues**

13. The Tribunal had to determine:-

- a. whether it had jurisdiction to grant the order(s) sought; and
- b. whether it was just and convenient in all the circumstances of the case to grant an order, and, if so, upon what terms.

## **Relevant Law**

14. The relevant provisions of the Landlord and Tenant Act 1987 read as follows:-

### **21 Tenant's right to apply to court for appointment of manager.**

(1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to the appropriate tribunal for an order under section 24 appointing a manager to act in relation to those premises.

[...]

### **22 Preliminary notice by tenant.**

(1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on—

- (i) the landlord, and
- (ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.

(2) A notice under this section must—

(a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which any person on whom the notice is served may serve notices, including notices in proceedings, on him in connection with this Part;

(b) state that the tenant intends to make an application for an order under section 24 to be made by the appropriate tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with;

(c) specify the grounds on which the tribunal would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;

(d) where those matters are capable of being remedied by [F14any person on whom the notice is served, require him], within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and

(e) contain such information (if any) as the Secretary of State may by regulations prescribe.

(3) The appropriate tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

(4) In a case where—

(a) a notice under this section has been served on the landlord, and  
(b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage, the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.

## **23 Application to court for appointment of manager.**

(1) No application for an order under section 24 shall be made to the appropriate tribunal unless—

(a) in a case where a notice has been served under section 22, either—  
(i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the person required to take steps in pursuance of that paragraph having taken them, or  
(ii) that paragraph was not applicable in the circumstances of the case; or  
(b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either—  
(i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or  
(ii) no direction was given by the tribunal when making the order.

## **24 Appointment of manager by a tribunal.**

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

(a) such functions in connection with the management of the premises, or  
(b) such functions of a receiver, or both, as the tribunal thinks fit.

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

(a) where the tribunal is satisfied—

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

reasonably practicable for the tenant to give him the appropriate notice, and

[...]

(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 or prohibited 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;

(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.

[...]

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

(a) if the amount is unreasonable having regard to the items for which it is payable,

(b) if the items for which it is payable are of an unnecessarily high standard, or

(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred. In that provision and this subsection “service charge” means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

[...]

(3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4) An order under this section may make provision with respect to—

(a) such matters relating to the exercise by the manager of his functions under the order, and

(b) such incidental or ancillary matters, as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide—

- (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
- (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
- (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
- (d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.

(7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—

- (a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or
- (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

(8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.

(9A) the tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—

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

(10) An order made under this section shall not be discharged by the appropriate tribunal by reason only that, by virtue of section 21(3), the

premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.

## **The Hearing**

15. The hearing was held via the HMCTS Video Hearings Service at 10.00am on 27<sup>th</sup> March 2024. The Applicant attended with Lloyd Williams (Legal Services Manager for Kingston Property Management Limited). The Respondent was represented by Leigh Rawlins (in-house Counsel for its own managing agent, HomeGround Management Limited). Carly Waller was also in attendance.
16. Prior to the hearing, the Applicant had submitted an initial bundle and a supplementary bundle for the use of the Tribunal. These included a copy of the application, the witness statements of Carly Waller dated 20<sup>th</sup> December 2023 and 8<sup>th</sup> March 2024, the witness statement of the Applicant, and a supplementary statement of case dated 8<sup>th</sup> March 2024.
17. The first witness statement of Carly Waller summarised the history of the management of the Property, including the recent involvement of her employer as the *de facto* managing agent and its suitability to continue undertaking this work under the auspices of a statutory appointment. Specimen leases, together with copies of risk assessments for the Property, which had been commissioned through her employer, were enclosed. Her second witness statement expanded on her personal suitability to be appointed as the manager and enclosed a management plan.
18. The Applicant's supplementary statement of case sought to address the potential jurisdictional issue identified by the Tribunal regarding the need for notice under Section 22 and the circumstances under which dispensation could be granted. Regrettably, but perhaps understandably, the Applicant's position in that regard was largely just to refer back to the merits of the overall case and point to the inconvenience to the parties if the Tribunal concluded that it could not grant the orders sought.
19. The members of the Tribunal discussed the contents of the written application papers with all those present at the hearing and interviewed Carly Waller. It was noted that although Carly Waller does not have prior experience of acting in a statutory appointment under the Act, there was a consensus among the parties that Carly Waller was suitable to be appointed. She provided details of her employment history, which includes 20 years' property management experience. She is employed as an assistant director, she has worked as both a project manager and a senior project manager, and she supervises a team of 14 building managers. Her experience of property management includes schemes of

up to 180 units. Her office is located approximately 10 minutes from the Property.

20. Carly Waller also gave evidence as to what she considered to be the main priorities in managing the Property. These included communication and transparency so that leaseholders are aware of the reasons behind decisions, repairing/replacing the lift, fire safety measures (especially the balconies), and analysing and implementing the results of the property survey once this has been received.
21. She was also able to refer to having dealt with component replacement projects, such as external windows and a communal roof (including awareness of the statutory consultation provisions, and applying to the Tribunal for dispensation from these requirements where appropriate).
22. Carly Waller went on to give an example of dealing with her experience of managing resident relationships. She said that in one scheme in Durham, concerns had been raised over the timescales for appointment of contractors. Leaseholders had also nominated contractors as part of the statutory consultation process, and it had been necessary to ensure that they were qualified and competent to undertake the works if selected. She explained to the Tribunal that she had arranged face-to-face meetings with residents to explain the process and provide reassurance, and that this was her preferred approach in such situations.
23. A copy of a Professional Indemnity Insurance certificate was supplied in evidence, but which had lapsed before the hearing took place. It was confirmed that the insurance had since been renewed and that it would be possible to forward a copy of the renewed certificate to the Tribunal, together with confirmation of whether the policy would also cover Carly Waller acting in her own capacity, within 14 days. The Tribunal duly received a copy of the updated insurance certificate and confirmation of the scope of cover after the hearing concluded.

## Analysis

### Does the Tribunal have jurisdiction to grant the order(s) sought?

24. As cited earlier, Section 22(3) of the Landlord and Tenant Act 1987, the Tribunal has power to dispense with the requirement for prior service of a notice on the landlord under “in a case where [the Tribunal] is satisfied that it would not be reasonably practicable to serve such a notice”. There is no express provision for dispensation to be granted on any other basis, whether by consent or otherwise.
25. Section 23 goes on to specify that “[n]o application for an order under section 24 shall be made” unless the criteria in either sub-section 1(a) or 1(b) are made out. Section 22(1)(a) relates to where a notice has been served, and Section 22(1)(b) relates to where “the requirement to serve such a notice has been dispensed with by an order under [Section 22(3)]”.

26. As such, it appears to the Tribunal that the Applicant must either serve the notice before commencing the application, or must obtain the Tribunal's dispensation afterwards; and that the Tribunal may only grant dispensation where the Tribunal is satisfied that it would not be reasonably practicable to serve such a notice.
27. It is obvious that it was practicable to serve a notice under Section 22, as the identity and contact details for the Respondent were well known to the Applicant. Indeed, contact was made with the landlord's agent via email. The fact that the Section 22 notice was served belatedly on 20<sup>th</sup> February 2024, after the Tribunal's Directions in which the issue was identified, is irrelevant and of no assistance.
28. The Tribunal is established by statute and therefore, unlike the High Court for example, has no inherent power to exercise jurisdiction which is not expressly conferred by legislation. Where jurisdiction is not conferred, the Tribunal has no choice but to strike out the application.
29. However, the Tribunal also notes that the original email to the Respondent's agent, dated 28<sup>th</sup> June 2023, states "We've attached a draft of the application for your consideration."
30. In so doing, they – albeit inadvertently – (a) specified the Applicant's name, the address of his flat and an address in England and Wales where notices, including notices in proceedings, may be served on him in connection with the Act; (b) stated that the Applicant intended to make an application for an order under section 24, to be made by the Tribunal, in respect of the Property; and (c) specified the grounds on which the Tribunal would be asked to make such an order and the matters that would be relied on by the Applicant for the purpose of establishing those grounds. As it is common ground that the matters were incapable of being resolved by the Respondent, Sub-section 22(2)(d) could not apply. There is no prescribed form of notice or additional information prescribed by secondary legislation (Sub-section 22(2)(e)).
31. The Tribunal therefore finds that the Applicant gave notice as required by Section 22 when the draft application was sent, even though this was undoubtedly not the intended result.

Is it just and convenient in all the circumstances of the case to grant the order(s) sought?

32. As the Applicant gave notice as required by Section 22, there is no need to make an order dispensing with the requirement for notice.
33. The Tribunal considers that it is just and equitable to appoint a manager under Section 24. Neither the Respondent nor any other person is legally obliged to keep the Property in repair, and no person has contractual power to require payment for conducting repairs and maintenance to the Property. Although the Property is relatively low risk compared to some

other high rise developments, proper care and management are nonetheless absolutely essential for keeping the residents safe. Some residents are already suffering considerable inconvenience from the lift being out of service, and it cannot be put back into service until someone with authority to conduct repairs (and to recover their costs) does so.

34. The Tribunal considers that it is just and equitable to appoint Carly Waller as the manager under Section 24. Although she has not previously been appointed as a manager by the LVT or FTT, she has extensive relevant experience and demonstrated a sound understanding of both property management principles and the nature of her duties under the appointment, so as to give the Tribunal confidence that she would be capable of performing them.

What are the appropriate terms?

35. The members of the Tribunal have considered the Practice Statement which was recently issued by Chamber President, which includes a revised template model order of appointment. The Tribunal has adopted the template with certain modifications and amended some of them to give effect to its views as to the best means of managing the appointment effectively in this particular situation.
36. In particular, the Tribunal has taken note of the Respondent's observation that it is responsible for placing insurance in respect of the Property, and the Respondent remains willing and able to do so, such that there is no need for the management order to deal with that issue. The Tribunal is willing to include a "carve out" to that effect. The Tribunal has the power to override the contractual provisions, should that ever become necessary.
37. Similarly, if it should be necessary to adjust the terms of appointment for any reason, then Carly Waller (or any party) may apply to the Tribunal for modifications accordingly. Prior written notice of any such application should be given to all other parties and/or the Manager, and their views sought in advance.
38. The initial appointment will be for a period of around two-and-a-half years. The Tribunal tends to authorise appointments initially for up to three years, which can be renewed on application as the expiry date approaches. The Tribunal wished to schedule the expiry of the first term of the appointment to coincide with the end of the service charge year for the leases under the Property, which appears to run from January to December each year.
39. The Manager is reminded that it is crucial that any application for an extension to her appointment is made well before the expiry date, to give the Tribunal an opportunity to consider making an interim order to extend her appointment pending full reconsideration, and that the need for an interim order (and the timescale for doing so) must be clearly raised

on any correspondence or application form so that it can be prioritised by the Tribunal staff.

40. The Manager is also reminded that the appointment is personal to her and that, whilst she is permitted and encouraged to assistance from her employer and its staff in discharging her duties, she remains solely and personally responsible for her conduct for so long as she holds the appointment.
41. Lastly, the appointment shall continue until it expires or is discharged by Order of the Tribunal, which means that if the Manager is (for any reason) no longer able or willing to continue fulfilling the terms of her appointment at any time in the future, she must make an application to the Tribunal for her to be discharged from the appointment. Similarly, if the Manager does not intend to seek re-appointment after the expiry date, then she should notify the Respondent and the leaseholders at a suitable juncture so that consideration can be given to whether a replacement should be sought.

**Name:**

**Tribunal Judge L. F. McLean  
Tribunal Member Mr J. Fraser  
FRICS**

**Date: 9<sup>th</sup> May 2024**

### **Rights of appeal**

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.
2. 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 regional office which has been dealing with the case.
3. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
4. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.
5. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. 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.

6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## **APPENDIX – DRAFT ORDER**

### **Interpretation**

1. In this Order:

“The Property” means the flats and other premises known as known as 1 to 26 Bramwell Court, Derwentwater Road, Gateshead, NE8 2SB and registered at HM Land Registry under title number TY313759 and shall include the building, outhouses, gardens, amenity space, drives, pathways landscaped areas, flower beds, passages, bin-stores, common parts, storage rooms basements, electricity and power rooms; and all other parts of the property.

“The Landlord” shall mean Adriatic Land 3 Limited or their successors in title to the reversion immediately expectant upon the Leases.

“The Tenants” shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and “Tenant” shall be construed accordingly.

“The Leases” shall mean all leases and/or underleases of flats in the Property.

“The Manager” means Carly Waller, c/o Kingston Property Services, Kingston Property Services, Cheviot House, Beaminster Way East Newcastle upon Tyne, NE3 2ER.

“The Tribunal” means the First-tier Tribunal (Property Chamber).

### **ORDER**

2. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (“the Act”) Carly Waller of Kingston Property Management Limited is appointed as Manager of the Property.
3. The Manager’s appointment shall start on 1<sup>st</sup> June 2024 (“the start date”) and shall end on 31<sup>st</sup> December 2026 (“the end date”).
4. For the avoidance of doubt this Order supplements but does not displace covenants under the Leases and the Tenants remain bound by them. Where there is a conflict between the provisions of the Order and the Leases, the provisions of the Order take precedence.
5. The purpose of this Management Order is to provide for the adequate management of the Property, including in particular (but not exclusively) ensuring that legislative developments are complied with (such as the Fire Safety Act 2021 and the Building Safety Act 2022) and that the communal lift can be repaired (or replaced, as the case may be) as soon as practicable.

6. Save for the placing and management of insurance in respect of the Property (which is the contractual responsibility of the Landlord under the Leases), the Manager shall manage the Property in accordance with:
  - a. the terms of this Order and the Directions set out below;
  - b. the obligations and powers under the Leases of the Landlord and/or of any company (including dissolved companies) to engage in acts of repair, maintenance, improvement, and/or general property management etc. (save as to the placing and management of insurance as aforesaid, or where otherwise modified by this Order);
  - c. the duties of a manager set out in the Service Charge Residential Management Code (“the Code”) (3rd Edition) or such other replacement code published by the Royal Institution of Chartered Surveyors (“RICS”) and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993 (whether the Manager is a Member of RICS or not);
  - d. the provisions of sections 18 to 33 of the Landlord and Tenant Act 1985; and
  - e. any other relevant legislation which applies from time to time.
7. The Tribunal requires the Manager to act fairly and impartially in the performance of her functions under this Order and with the skill, care and diligence to be reasonably expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions.
8. The Manager must perform her duties under this Order independently, and has an overriding duty to the Tribunal.
9. The Manager or any other interested person may apply to vary or discharge this Order pursuant to the provisions of section 24(9) of the Act.
10. The Tribunal may, upon receipt of information or notification of change of circumstances, issue directions to the parties, or any other interested person, concerning the operation of this Order, both during its term, and after its expiry.
11. Any application to extend or renew this Order must be made before the end date, preferably at least **four months** before that date, and supported by a brief report of the management of the Property during the period of the appointment. Where an application for an extension or renewal is made prior to the end date, then the Manager’s appointment will continue until that application has been finally determined.
12. The Manager is appointed to take all decisions about the management of the Property necessary to achieve the purposes of this Order. If the Manager is unable to decide what course to take, the Manager may apply

to the Tribunal for further directions, in accordance with section 24(4) of the Landlord and Tenant Act 1987. Circumstances in which a request for such directions may be appropriate include, but are not limited to:

- a. a serious or persistent failure by any party to comply with an obligation imposed by this Order;
- b. circumstances where there are insufficient sums held by the Manager to discharge her obligations under this Order and/or for the parties to pay the Manager's remuneration; and
- c. where the Manager is in doubt as to the proper construction and meaning of this Order.

## **Contracts**

13. Rights and liabilities arising under contracts, including any contract for the provision of any services to the Property (except for any contract of insurance in respect of the Property which is entered into by the Landlord), to which the Manager is not a party, but which are relevant to the management of the Property, shall upon the date of appointment become rights and liabilities of the Manager, save that:
  - a. the Tenants shall indemnify the Manager for any liabilities arising before commencement of this Order; and
  - b. the Manager has the right to decide, in her absolute discretion, the contracts in respect of which she will assume such rights and liabilities, with such decision to be communicated in writing to the relevant parties within 56 days from the date of this order.
14. The Manager may place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property.
15. The Manager shall be responsible for responding to pre-contract enquiries regarding the sale of any residential flat at the Property.

## **Legal Proceedings**

16. The Manager may bring or defend any court or tribunal proceedings relating to management of the Property (whether contractual or tortious) and, subject to the approval of the Tribunal, may continue to bring or defend proceedings relating to the appointment, after the end of her appointment.
17. Such entitlement includes bringing proceedings in respect of arrears of service charge attributable to any of the residential flats in the Property, including, where appropriate, proceedings before the Tribunal under section 27A of the Landlord and Tenant Act 1985 and in respect of administration charges under schedule 11 to the Commonhold and Leasehold Reform Act 2002 or under section 168(4) of that Act, or before the courts, and shall further include any appeal against any decision made in any such proceedings.

18. The Manager may instruct solicitors, counsel, and other professionals in seeking to bring or defend legal proceedings and is entitled to be reimbursed from the service charge account in respect of costs, disbursements or VAT reasonably incurred in doing so during, or after, this appointment. If costs paid from the service charge are subsequently recovered from another party, those costs must be refunded to the service charge account.

## **Remuneration**

19. The Tenants are responsible for payment of the Managers' fees, which are payable under the provisions of this Order but which may be collected under the service charge mechanisms of their Leases.
20. The sums payable are:
  - a. an annual fee of **£165** per flat for performing the duties set out in paragraph 3.4 of the RICS Code (so far as applicable);
  - b. any additional fees contained in a schedule to this Order for the duties set out in paragraph 3.5 of the RICS Code (so far as applicable); and
  - c. Such additional fees as are charged by the Manager's firm for any additional services which are reasonably required from time to time and in accordance with the principles set out in the RICS Code, and which shall be subject to the applicable requirements and provisions of sections 18 to 33 of the Landlord and Tenant Act 1985; and
  - d. VAT on the above fees where applicable.
21. The Manager shall be entitled to increase the annual fee noted in paragraph 19(a) once per year, at the start of each new service charge year. Such increase shall be a reasonable increase, and shall not exceed the amount by which RPI has increased (if at all) over the previous year, as measured by the increase in the rate over the 12 months ending with the September immediately before the increase in question.
22. The Manager is entitled to recover through the service charge the reasonable costs and fees of any surveyors, architects, solicitors, counsel, and other professional persons or firms, incurred by her on her behalf, in relation to the carrying out of her functions under the Order.

## **Ground Rent and Service charge**

23. The Manager shall not collect the ground rents payable under the Leases.
24. The Manager shall collect all service charge contributions payable under the Leases (except regarding costs arising from any contract of insurance in respect of the Property which is entered into by the Landlord) in accordance with the terms and mechanisms in the Leases, as if the Manager were the person contractually entitled to receipt of the same.

25. Whether or not the terms of any Lease so provide, the Manager shall have the authority to:
  - a. demand payments in advance and balancing payments at the end of the accounting year;
  - b. establish a sinking fund to meet the obligations of any persons under the Leases (other than those of the Tenants);
  - c. allocate credits of service charge due to Tenants at the end of the accounting year to the sinking fund; and
  - d. alter the accounting year and to collect arrears of service charge that have accrued before her appointment.
26. The Manager may set, demand and collect a reasonable service charge to be paid by the Landlord (as if he were a lessee), in respect of any unused premises in any part of the Property retained by the Landlord, or let on terms which do not require the payment of a service charge.

## **Administration Charges**

27. The Manager may recover administration charges from individual Tenants for her costs incurred in collecting service charges which includes the costs of reminder letters, transfer of files to solicitors and letters before action. Such charges will be subject to legal requirements as set out in schedule 11 to the Commonhold and Leasehold Reform Act 2002.

## **Disputes**

28. 31. In the event of a dispute regarding the payability of any sum payable under this Order by the Tenants, additional to those under the Leases (including as to the remuneration payable to the Manager and litigation costs incurred by the Manager), a Tenant, or the Manager, may apply to the Tribunal seeking a determination under section 27A of the Landlord and Tenant Act 1985 as to whether the sum in dispute is payable and, if so, in what amount.
29. In the event of a dispute regarding the payability of any sum payable under this Order by the Landlord, other than a payment under a Lease, the Manager or the Landlord may apply to the Tribunal seeking a determination as to whether the sum in dispute is payable and, if so, in what amount.
30. In the event of a dispute regarding the conduct of the management of the property by the Manager, any person interested may apply to the Tribunal to vary or discharge the order in accordance with section 24(9) of the Landlord and Tenant Act 1987.

31. In the event of a dispute regarding the reimbursement of unexpended monies at the end of the Manager's appointment, the Manager, a Tenant, or the Landlord may apply to the Tribunal for a determination as to what monies, if any, are payable, to whom, and in what amount.

### **DIRECTIONS TO LANDLORD**

32. The Landlord must comply with the terms of this Order.
33. On any disposition other than a charge of the Landlord's estate in the Property, the Landlord will procure from the person to whom the Property is to be conveyed a direct covenant with the Manager, that the said person will (a) comply with the terms of this Order; and (b) on any future disposition (other than a charge) procure a direct covenant in the same terms from the person to whom the Property is to be conveyed.
34. The Landlord shall give all reasonable assistance and co-operation to the Manager in pursuance of her functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of the Manager's said rights, duties or powers except by due process of law.
35. The Landlord is to allow the Manager and her employees and agents access to all parts of the Property and must provide keys, passwords, and any other documents or information necessary for the practical management of the Property in order that the Manager might conveniently perform her functions and duties, and exercise her powers under this Order.

### **DIRECTIONS TO MANAGER**

36. The Manager must adhere to the terms of this Order.

### **Entry of a Form L restriction in the Register of the Landlord's Registered Estate**

37. To protect the direction in paragraph 33 for procurement by the Landlord of a direct covenant with the Manager, the Manager must apply for the entry of the following restriction in the register of the Landlord's estate under title no TY313759.

*"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without a certificate signed by the applicant for registration (or their conveyancer) that the provisions of paragraph 33 of an Order of the First-tier Tribunal (Property Chamber) dated [INSERT DATE - TBC] 2024 have been complied with."*

## **Registration**

38. The Manager must make an application to HM Land Registry for entry of the restriction referred to in paragraph 37, within 14 days of the date of this Order.
39. A copy of the Order should accompany the application (unless it is submitted by a solicitor able to make the necessary declaration at Box 8(c) of the RX1 application form). The application should confirm that:
  - a. this is an Order made under the Landlord and Tenant Act 1987, Part II (Appointment of Managers by a Tribunal) and that pursuant to section 24(8) of the 1987 Act, the Land Registration Act 2002 shall apply in relation to an Order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
  - b. Consequently, pursuant to Rule 93(s) of the Land Registration Rules 2003, the Manager is a person regarded as having sufficient interest to apply for a restriction in standard Form L or N.
40. The manager may also register this Order against the registered title to the Property in accordance with section 24(8) of the Act.

## **Conflicts of Interest**

41. The Manager must be astute to avoid any Conflict of Interest between her duties and obligations under this Order, and her contractual dealings. Where in doubt, the Manager should apply to the Tribunal for directions.

## **Complaints**

42. The Manager must operate a complaints procedure in accordance with, or substantially similar to, the requirements of RICS.

## **Insurance**

43. The Manager must ensure that the Landlord maintains appropriate building insurance for the Property that the Manager's interest is noted on the insurance policy.
44. From the date of appointment, and throughout the appointment, the Manager must ensure that she has appropriate professional indemnity insurance cover in the sum of at least £5,000,000 and shall provide copies of the certificate of liability insurance to the Tribunal, and, upon request, to any Tenant or the Landlord. The Certificate should specifically state that it applies to the duties of a Tribunal appointed Manager or otherwise ensure that the scope of cover includes these duties.

## **Accounts**

45. The Manager must:

- a. prepare and submit to the Landlord and the Tenants an annual statement of account detailing all monies receivable, received and expended (such accounts to be independently certified or audited, if required under the Leases);
- b. maintain efficient records and books of account and to produce these for inspection, to include receipts or other evidence of expenditure, upon request by the Landlord or a Tenant under section 22 Landlord and Tenant Act 1985;
- c. maintain on trust in an interest-bearing account at such bank or building society, as the Manager shall from time to time decide, into which service charge contributions and all other monies arising under the Leases shall be paid; and
- d. hold all monies collected in accordance with the provisions of the Code.

## **Repairs and maintenance**

46. The Manager must:

- a. by 1<sup>st</sup> July 2024 draw up a planned maintenance programme for the period of the appointment, allowing for the periodic re-decoration and repair of the exterior and interior common parts of the Property, as well as any roads, accessways, mechanical, electrical and other installations serving the Property, and shall send a copy to every Tenant and to the Landlord;
- b. subject to receiving sufficient prior funds:
  - i. carry out all required repair and maintenance issues required at the Property, as identified in the Leases and any other relevant legislation which applies from time to time, including instructing contractors to attend and rectify problems (and the Manager is entitled to recover the cost of doing so as a service charge payable under the Leases or in accordance with this Order);
  - ii. arrange and supervise any required major works to the Property, including preparing a specification of works and obtaining competitive tenders;
- c. liaise with all relevant statutory bodies in the carrying out of her management functions under the Order (including, but not limited to, the Building Safety Regulator); and

- d. ensure that the Landlord and the Tenants are consulted on any planned and major works to the Property and to give proper regard to their views.

47. The Manager has the power to incur expenditure in respect of health and safety equipment reasonably required to comply with regulatory and statutory requirements.

## **Reporting**

48. By no later than six months from the date of appointment (and then annually thereafter), the Manager must prepare and submit a brief written report to the Tenants and the Landlord on the progress of the management of the Property up to that date, providing a copy to the Tribunal at the same time.

## **End of Appointment**

49. No later than 56 days before the end date, the Manager must:

- a. apply to the Tribunal for directions as to the disposal of any unexpended monies;
- b. include with that application a brief written report on the progress and outcome of the management of the Property up to that date (a “Final Report”); and
- c. seek a direction from the Tribunal as to the mechanism for determining any unresolved disputes arising from the Manager’s term of appointment (whether through court or tribunal proceedings or otherwise).

50. Unless the tribunal directs otherwise the Manager must within two months of the end date:

- a. prepare final closing accounts and send copies of the accounts and the Final Report to the Landlord and Tenants, who may raise queries on them within 14 days; and
- b. answer any such queries within a further 14 days.

51. The Manager must reimburse any unexpended monies to the paying parties, or, if it be the case, to any new Tribunal-appointed manager within three months of the end date or, in the case of a dispute, as decided by the Tribunal upon an application by any interested party.