



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

Case Reference : CHI/29UL/LAM/2022/0008

Property : 5 Wellington Terrace, The Esplanade,
Sandgate, Folkestone CT20 3DY

Applicant : Napoleon Management (Sandgate) Limited

Representative : Gregory Playfoot

Respondents : Leaseholders of Basement Flat 1, Flats 2, 3,
4 and 5

Type of Application : Appointment of manager section 24 of the
Landlord and Tenant Act 1987

Tribunal Member(s) : Judge Tildesley OBE
Mr D Ashby FRICS
Mr P Gammon MBE

**Date and Place of
Hearing** : 22 August 2022
Havant Justice Centre
Members and Parties Joined by the
Common Video Platform

Date of Decision : 10 October 2022

SUPPLEMENTAL DECISION

Background

1. This decision is supplemental to the one issued on 2 September 2022, and deals with the responses of Mr Battrick to the matters requested by the Tribunal.
2. The decision of the 2 September 2022 stated that the Tribunal formed the view that Mr Battrick would be suitable to be appointed as a Manager pursuant to section 24 of the 1987 Act subject to him confirming the following matters:
 - The PII cover be increased to £2M and that it would apply to his duties as a Tribunal appointed Manager.
 - Confirmation from Client Money Protect that it applied to service charges collected from long leaseholders, and the level of protection.
 - To provide a revised schedule of costs which should be in the form recommended at paragraph 3.4 of the Code: Annual Fee and a Menu of Charges for duties outside the scope of the Annual Fee. The Tribunal acknowledges that the Annual Fee is likely to be higher for a Manager appointed under section 24 because by definition the Manager is dealing with a “problem” building. The fee, however, still needs to be within the bounds of reasonableness. The fee should not include costs directly connected with the landlord’s status as a Company. These should be separately agreed with the landlord and recovered from the shareholders of the company.
 - To give an indication of the amount of funds necessary to provide an adequate sum to cover immediate costs on taking up appointment. The immediate costs relate to running costs including preliminaries for the major works.
3. The Tribunal required Mr Battrick if he wished to be appointed to provide the above information to the Tribunal and to the leaseholders within 14 days from the date of this decision.
4. On receipt of the information and provided it is satisfactory to the Tribunal, the Tribunal would confirm the appointment of Mr Battrick as Manager pursuant to section 24 of the 1987 Act initially for period of 15 months with an option to apply for an extension of the Order after 12 months. The extension would be at the discretion of the Tribunal. The terms of the appointment would be in accordance with the Draft Management Order. Under the terms of the Order the Manager would have power to demand payments in advance in respect of service charges together with the facility to require each leaseholder to pay an immediate sum to put the Manager in funds to carry out his duties. The

parties are reminded that the provisions of the Order overtake the provisions in the lease.

Mr Battrick's Response

5. The Tribunal agreed to an extension of the 14 day deadline for Mr Battrick's response.
6. On 21 September 2022 Mr Battrick supplied a copy of a "Block Management Agreement", an extract from the Housing and Planning Act, and a response from his Professional Indemnity Insurance provider.
7. On 26 September 2022 Mr Battrick supplied a draft service charge budget for the property covering the period of 12 months from 1 November 2022, and a response from Client Money Protect.

The Order

8. The Tribunal makes the Order for the period 1 November 2022 to 1 February 2024 with an option to apply for an extension of the Order on the terms set out in the Order attached and on the following bases.
9. The level of Professional Indemnity Insurance is increased to £2 million and that the insurance documents would record Mr Battrick's role as FTT Appointed Manager (this was confirmed in emails dated 16 and 20 September 2022 from CMP Professional Indemnity Enquiries Membership Policy 8036572). **A copy of the Policy certificate recording the £2m cover with the Note that it covers the role of FTT Appointed Manager is to be provided to the Tribunal by no later than 30 November 2022**
10. The Tribunal has received confirmation from Client Money Protect in an email from Dee of CMP Membership Team quoting Membership Number CMP 003163 315011. The email confirmed that CMP Membership covered all client monies held in a client segregated back account which included service charge monies paid in advance for property management.
11. The Appointment is on the terms of the Management Order not the "Block Management Agreement" produced by Mr Battrick dated 14 September 2022. Thus the Annual Management Fee is to cover the functions of the Manager which is the reason why a Manager can charge a higher annual fee than acting as a Managing Agent. In addition the Manager can charge fees for additional duties which broadly reflect the fees set out by Mr Battrick in the Block Management Agreement. Fees which relate to the costs of the Landlord company are payable by the shareholders of that company not by the leaseholders, and should be separately agreed. The Management Order identifies the additional fees that should be charged to the Company.

12. The Tribunal records that the Manager does not accept Responsible Person status if full compliance with Fire Safety Regulations in Place. The Tribunal accepts that it is the responsibility of the Landlord/Freeholder until appropriate safety systems and protection are installed and under a maintenance contract. The Tribunal notes that the Manager would, however, act as soon as is reasonably possible, to mitigate present risks so that the situation can be normalised and normal management roles resumed.
13. The Tribunal reminds Mr Battrick that the position of a Tribunal appointed manager is different from a Managing Agent. There is no client as such so the proposal for maximum financial liability for the Manager's actions is not applicable. This is why the Tribunal requires a Manager to have adequate cover for Professional Indemnity Insurance. The additional premium for taking out adequate cover is either borne by the Manager or separately agreed with the landlord. By having adequate cover for Professional Indemnity Insurance the Manager is able to charge higher annual management fees than for the appointment of a managing agent. The Tribunal accepts Mr Battrick's rebuttal that the added cost of cover would not be a basis for new higher paying work in other areas of his business.
14. The Tribunal acknowledges receipt of Mr Battrick's proposed service charge budget. The Management Order gives the Manager authority to demand service charges in advance from 1 November 2022.
15. The Tribunal notes that Mr Battrick has circulated his responses to the freeholder and the leaseholders. The Tribunal has received no response from them.
16. **Mr Battrick is asked to confirm that he is accepts the Appointment of Manager on the terms of the Management Order attached within seven days. Following confirmation the Order will take effect from 1 November 2022.**

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making application by email to rpsouthern@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.