



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

<b>Case references</b>	:	<b>(1) LON/00AW/LSC/2023/0451 (2) LON/00AW/LSC/2023/0473 &amp; (3) LON/00AW/LVM/2024/0001</b>
<b>Property</b>	:	<b>178 Holland Road, London W14 8AH</b>
<b>Applicants</b>	:	<b>(1) &amp; (2) Mr M Ciampi (3) Ms C Heathcote-Drury</b>
<b>Representatives</b>	:	<b>In person</b>
<b>Respondents</b>	:	<b>(1) Mr Richard Davidoff (former tribunal appointed manager) (2) Mr Paul Cleaver (current tribunal appointed manager) (3) 178 Holland Road Management Limited (freeholder) (1)-(3) The other lessees of 178 Holland Road</b>
<b>Representative</b>	:	<b>In person</b>
<b>Type of application</b>	:	<b>(1) &amp; (2) Determination of the reasonableness and payability of service charges (3) Application to vary a management order</b>
<b>Tribunal members</b>	:	<b>Judge N Hawkes S F Mason BSc FRICS Mr O N Miller BSc</b>
<b>Venue and date of hearing and reconvene</b>	:	<b>Hearing: 9 and 10 September 2024 at 10 Alfred Place, London WC1E 7LR Reconvene: 30 October 2024</b>
<b>Date of decision</b>	:	<b>4 November 2024</b>

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal makes the determinations under the various headings below.
- (2) **By 5 pm on 18 November 2024** Mr Cleaver, the current Tribunal appointed Manager, shall send each of the Applicants a schedule setting out the sums which are payable by them under each heading below following the Tribunal's determinations. If these figures are not agreed, any party may apply to the Tribunal (on notice to all other parties) for a determination, setting out the reasons for the dispute, **by 5 pm on 9 December 2024**.
- (3) The appointment of Mr Paul Cleaver as Manager of the Property is extended until **4 November 2026**. No other variation has been made to the terms and conditions of the existing order.
- (4) Any applications concerning costs which do not form part of this decision must be made, on notice to all other parties, within 28 days after the date of this decision.

## **The applications**

1. Three substantive applications are listed before this Tribunal:
  - (i) The first application, LON/00AW/LSC/2023/0451 ("Application 1"), was made by Mr M Ciampi, one the lessees and a director of the lessee-owned freehold company, 178 Holland Road Management Limited. Mr Ciampi challenges the reasonableness and payability of service charges levied by the former Tribunal appointed manager, Mr Richard Davidoff of ABC Estates Limited. Mr Davidoff was appointed Manager on 26 February 2021, and he was replaced as Manager on 13 October 2022. Mr Davidoff has prepared final service charge accounts for the year ended 31 December 2021.
  - (ii) The second application ("Application 2"), LON/00AW/LSC/2023/0473, was also made by Mr Ciampi and challenges the reasonableness and payability of service charges levied by the current Manager, Mr Paul Cleaver of Urang, who was appointed Manager from 13 October 2022 and whose appointment was originally until 26 February 2024. His appointment was extended by an interim order until the final determination of third application (see below). Mr Cleaver has prepared service charge

accounts for the year ended 31 December 2022 but most of the material which forms the basis of these accounts emanates from Mr Davidoff who was the Tribunal appointed manager for the majority of that year. Mr Cleaver has also prepared a service charge budget for the year ended 31 December 2023. He informed the Tribunal that, due to the non-payment of service charges, he had insufficient funds to instruct an accountant to prepare the final accounts for the year ended 31 December 2023.

- (iii) The third application (“Application 3”), LON/00AW/LVM/2024/0001, was made by Ms C Heathcote-Drury, who applies to extend the current Management Order for a period of two years. Her application is made to prevent management of the Property reverting to the freeholder company.

### **The hearing**

2. The final hearing took place at 10 Alfred Place, London WC1E 7LR on 9 and 10 September 2024, as a hybrid hearing. Mr Davidoff appeared by video on 9 September 2024 and an observer attended by video on 10 September 2024. All other participants appeared in person on both hearing days. Mr Ciampi was accompanied by Dr Chaherli. Both Mr Ciampi and Dr Chaherli are currently directors of 178 Holland Road Management Ltd, the lessee-owned freeholder of the Property.
3. The Property is a five-storey end of terrace house which has been converted into eight flats. No party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
4. There were many documents within the hearing bundles and in unpaginated PDFs submitted prior to the hearing which concerned matters over which this Tribunal has no jurisdiction. Further, a disproportionate amount of documentation and correspondence had been submitted. By way of example, the Case Officer informed the Tribunal that nine emails were sent to her concerning these proceedings after close of business on the Friday before the hearing (which started on a Monday). Accordingly, at the commencement of the hearing, the parties were reminded of the need to adopt a reasonable and proportionate approach to litigation.
5. The parties were informed that they could rely upon anything in the bundles which was relevant to the issues within the Tribunal's jurisdiction. It was also explained that they should present the entirety of their cases orally at the hearing. This was in order that everyone would know which parts of the Scott Schedules, witness statements, and

documents were being relied upon and so that any party with an alternative viewpoint would have the opportunity to make oral representations to the Tribunal in response to each point which was being raised.

### **The issues**

6. The Tribunal's jurisdiction is derived from statute, and it has no inherent jurisdiction. The Applications 1 and 2 concern the reasonableness and payability of service charges pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act").

7. Section 27A of the 1985 Act includes provision that:

*27A Liability to pay service charges: jurisdiction*

*(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—*

*(a) the person by whom it is payable,*

*(b) the person to whom it is payable,*

*(c) the amount which is payable,*

*(d) the date at or by which it is payable, and*

*(e) the manner in which it is payable.*

*(2) Subsection (1) applies whether or not any payment has been made.*

8. Under the heading "Service Charge", the Management Order includes provision that the Manager shall:

*"Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.... The Manager shall have the right to treat the service charge financial year as commencing on the date of this Order and ending on 31 December 2021 and thereafter as running from 1 January to 31 December in each year this Order is in place."*

9. Under the heading "Accounts" the Management Order includes provision that the Manager shall:

*"Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended from*

*the date of the Manager's appointments. The accounts to be certified by an external auditor, if required by the Manager."*

10. The purpose of the annual service charge budget is to set out the estimated service charge costs for the year ahead and the purpose of the annual statement of account is to set out the precise sums which the Manager will claim from the lessees by way of service charge during the year in question. Accordingly, where annual statements of account have been prepared, the Tribunal can determine the reasonableness and payability of the actual service charges. However, before the annual statements of account have been prepared, the Tribunal can only determine the reasonableness and payability of the estimated advance service charges because the final figures (which may be the subject of an external audit before they are finalised) are not yet known.
11. Regional Judge Powell drew a distinction between the final service charges and the advance service charges in his Directions. At paragraph (1) of his Directions dated 19 December 2023, Judge Powell stated (emphasis supplied) *"The first application challenges the reasonableness and payability **of service charges** levied by the former tribunal-appointed manager, Mr Richard Davidoff of ABC Estates Limited" and "The second application challenges the reasonableness and payability **of advanced service charges** levied by the current manager, Mr Paul Cleaver of Urang"*.
12. Judge Powell drew the same distinction between the two applications in his Interim Order and Directions dated 2 February 2024 in which he again referred to the first application as concerning "service charges" and the second as concerning "advanced service charges".
13. Mr Ciampi had not appreciated the significance of this distinction in the Directions and he had not appreciated the underlying limitations to the Tribunal's jurisdiction which are set out above. Accordingly, he had spent a significant amount of time and effort preparing to challenge the 2023 actual service charges based on documents disclosed by Mr Cleaver concerning the year 2023. Some of this work may be useful when Mr Ciampi comes to consider the actual service charge accounts for the year 2023. In any event, it does not change the fact that the Tribunal can only determine the reasonableness and payability of the estimated advance service charges for the year 2023 because the final figures (which may be the subject of an external audit before they are finalised) are not yet known.
14. As stated above, the issues which the parties sought to raise extended to numerous matters falling outside the Tribunal's statutory jurisdiction. At various times, the Tribunal was asked for advice as to how other matters could be raised and Mr Ciampi pointed out that he is not a lawyer. The Tribunal informed the parties that the Tribunal cannot provide them with legal advice and that they must seek their own

independent legal advice. However, a Legal Advice Flyer can be obtained from the Case Officer listing various organisations which may be able to provide them with independent legal advice, some of which may be able to do so free of charge.

15. At the commencement of the hearing, the Tribunal noted that Mr Cleaver was likely to seek to claim his reasonable costs of attendance pursuant to the Management Order, and that Mr Davidoff may also seek to claim his costs of attendance, although a potential legal basis for such a claim was not identified by him at the hearing. In order to make best use of the Tribunal's time and the parties' time and in order to ensure that any professional fees were not unnecessarily incurred, the parties were urged to focus on the relevant issues at the commencement of the hearing and this request was repeated on several occasions during the course of the hearing.
16. Further, the Tribunal restricted the evidence of Mr Davidoff concerning email correspondence upon which he sought to rely on the issue of the number of inspections which were reasonably required to investigate reports of water leaks at the Property. This was because the Tribunal had received enough evidence to make its determination on this issue. The Tribunal has, in any event, determined this issue in Mr Davidoff's favour.
17. In order to provide a clear framework for the hearing and to ensure that the parties focussed on the relevant issues, the service charge accounts were the starting point for discussions, save in respect of the year 2023 for which no service charge accounts have yet been prepared. To ensure that everything was covered, the Tribunal drew the parties' attention to each service charge item in each year in turn and the parties were invited to raise any challenges (if they had put the other parties on notice of the challenge in the Scott Schedule). The parties were also invited to inform the Tribunal if any challenge was being made which may not have been adequately set out in the Scott Schedule.
18. The parties agreed that no challenges to the estimated service charges for the year 2023 had been made in the Scott Schedule. The Tribunal would not generally permit wholly new matters to be raised for the first time part-way through a hearing. However, because Mr Cleaver consented and was in a position to respond and because the Tribunal accepted that Mr Ciampi had genuinely misunderstood the nature of Judge Powell's Directions, the Tribunal nonetheless exercised its case management powers pursuant to rule 6 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in favour of the Applicants so as to allow Mr Cleaver to be questioned concerning the reasonableness of any budgeted service charge sums for the service charge year 2023 in excess of £1,000 in total (£125 per lessee). It would not have been proportionate to consider the lower value items, in particular, given the limited time available and the risk of then exceeding the two day time estimate.

## **The Tribunal's determinations**

19. The Tribunal raised the point that all service charges claimed by a Tribunal appointed Manager should be set out in the annual service charge accounts. Neither the current Manager nor the former Manager made any submissions to the contrary. However, the lessees informed the Tribunal that they believed that they had made payments to Mr Davidoff in respect of service charge items which do not appear in the final service charge accounts. Accordingly, for the avoidance of doubt, the Tribunal records that we are not satisfied that any sums which are not set out in the service charge accounts are payable to Mr Davidoff by way of service charge or administration charge.

### **Application 1: the reasonableness and payability of the actual service charge costs for the year 2021**

20. Costs relating to general repairs and maintenance, cleaning, electricity charges, accountancy fees, managing agent's fees (including set up costs), a health, safety and fire risk assessment, and general cleaning are not disputed.

#### *Legal and professional fees £7,721*

21. One of the invoices under this heading is an invoice in the sum of £3,420 from Mr Andrew Mazin of Sanderson Weatherall for preparing a specification for work to the front and rear elevations of the Property and for liaising with Building Control. These costs were not challenged by Mr Ciampi or Dr Chaherli. Ms Heathcote-Drury stated that Sanderson Wetherall was working in-house within Mr Davidoff's offices. She also believed that Mr Davidoff had stated at a hearing in May 2022 that "the situation with Sanderson Wetherall could not proceed" because they "did not get the gig". In addition, Ms Heathcote-Drury asserted that the invoice may not be genuine and that the work carried out was not worth £3,420.
22. Mr Davidoff stated that, if he had made a comment along the lines suggested by Ms Heathcote-Drury, he could have been referring to the supervision fee of 15% because Sanderson Wetherall would not have been supervising the project. On being asked about the connection between Ms Mazin and his firm, Mr Davidoff stated that Mr Mazin is a professional independent Chartered Building Surveyor who he has used for 10 years. He said that Mr Mazin used to be a sole practitioner and then joined a larger national firm.
23. Ms Heathcote-Drury did not produce any evidence that Mr Mazin is not an appropriately qualified professional in support of her assertions. It would have been open to her to check Mr Mazin's status with relevant

professional bodies. Further, no alternative quotations for this work have been provided by Ms Heathcote-Drury.

24. The Tribunal is not satisfied on the limited evidence available on the balance of probabilities that the costs under this heading are outside the reasonable range for the work carried out or that the invoice is not genuine. Accordingly, we find that the sum of £3,420 is reasonable and payable.
25. A further invoice under this heading in the sum of £500.40 for work carried out by independent solicitors was not challenged.
26. Mr Davidoff stated that the remaining costs relate to the fees of Mr Rumun BSc (Hons) MRICS which the representatives of the freehold company had asked him to put through the service charge. A previous Tribunal decision dated 26 February 2021 includes provision that these sums must not be passed through the service charge. Accordingly, the remaining costs under this heading (Mr Rumun's fees) are not payable.

*Insurance £1,519*

27. The Tribunal was referred to an invoice from St Giles insurance which was challenged by all of the Applicants. Mr Cleaver explained that the insurance year does not follow the accounting year and that insurance costs are allocated to the year in which the relevant instalments of the premium are invoiced. Mr Davidoff gave evidence that, in order to obtain insurance, he went to an independent broker who went to the market and obtained the best quotation, which was from Aviva (who were already insuring the Property). He said that the claims history of the Property had affected the premium and that the premium was "robust" because the Property was considered high risk. He also stated that, as a result of the Property's claims history, other insurance companies did not even want to quote.
28. Mr Ciampi stated that "everything had been resolved" and that the insurance premium had only increased because Mr Davidoff had failed to inform the insurers of this fact. Mr Davidoff disagreed pointing out that the insurance had remained with Aviva and that Aviva knew the full claims history because they were the ones who had paid out. He stated that the underwriter had changed during his time as Manager but that the insurer had stayed the same.
29. Mrs Heathcote-Drury stated that a subsidence claim was lodged in 2012 but that the insurance premiums did not instantly go up. She also said that two flash floods in area have affected premiums. She informed the Tribunal that the subsidence claim was settled in 2017 but that a 2019 flood damage claim is still open. She also questioned whether any commission was part of the premium.



30. Mr Davidoff stated that his firm usually receives 10% to 15% commission from the broker. He said that, if his firm does not take the commission, the broker keeps it. He stated that the number of claims as well as the quantum of the claims had caused the insurance premium to increase. On being asked by the Tribunal to provide a specific figure, Mr Davidoff stated that his firm had received commission of £847.42 during the relevant period. He said that, in return for the commission, his firm had handled the insurance claims, that there was no separate charge for this, and that the work had probably taken 300 to 400 hours.
31. We make no finding concerning whether 300 to 400 hours was likely to have been spent handling insurance claims. However, we accept that it is likely that a considerable amount of time would have been spent handling insurance claims which would more than justify a payment of commission in the sum of £847.42. In reaching this conclusion we have had regard to the documents in the bundle to which we were referred. We otherwise accept Mr Davidoff's evidence on this issue. Further, no alternative like for like quotations have been provided. Having considered all of the evidence before us, we are not satisfied on the balance of probabilities the costs of insuring the Property fall outside the reasonable range. Accordingly, we find that they are payable.

**Application 2: the reasonableness and payability of the actual service charge costs for the year 2022 and the estimated service charge costs for the year 2023**

The 2022 actual service charge costs

32. Costs relating to general cleaning, electricity, and reserve fund contributions are not disputed.

*General Building Repairs/Works £1,953.55*

33. The sum of £1,953.55 is made up of two invoices in the sum of £540 (for investigating pressure loss to a boiler and dripping into the flat below) and £1,413.55 (for investigating a leak and changing a pan connection and flush cone). This work was carried in connection with water penetration from Flat 2 to Flat 1. We note that, if the problem of water penetration had not been remedied, it would have had the potential to cause structural damage to the Property. Mr Davidoff gave evidence that the insurers definitely did not pay out any sum in respect of this matter. He also stated that the insurance excess would have been £2,500. Ms Heathcote Drury submitted that these costs are too high and that the relevant work could have been completed in 20 minutes. However, she provided no alternative quotations or expert opinion evidencing these assertions. She also questioned why Mr Davidoff had not been able to recover these sums from the lessee of Flat 2 when Mr Davidoff explained he had been unable to recover the relevant costs.

34. We are not satisfied on the limited evidence available that these costs fall outside the reasonable range of charges for the work which was carried out. We accept on the balance of probabilities Mr Davidoff's evidence that the relevant sums have not been paid by Aviva. Some or all of these costs may be potentially recoverable from the lessee of Flat 2 (we make no findings in this regard). However, given the sums involved, the potential cost of litigation and failure of lessees at the Property to pay service charges, we do not accept that Mr Davidoff acted unreasonably in failing to pursue lessee of Flat 2 through Court proceedings with a view to recovering these sums. Accordingly, we find that the costs under this heading are reasonable and payable.

*Management Services £4,677.39*

35. The parties accepted that, of this sum, £4,320 is the management fee which is payable pursuant to the terms of the Management Order. The sum of £300 was incurred in sending out notices pursuant to section 20B of the Landlord and Tenant Act 1985 ("section 20B notices"). The Tribunal is satisfied that it was reasonable for the Manager to incur the sum of £300 in sending out section 20B notices when there were substantial service charge arrears, due to non-payment on the part of certain of the lessees, which were likely delay all forms of property management, including the sending out of service charge demands and the preparation of final accounts.
36. There is a further sum of £57 under this heading which Mr Davidoff could not relate to any specific service charge item. Accordingly, the Tribunal is not satisfied that the sum of £57 under this heading is reasonable or payable.

*Solicitors & Legal £3,480.00*

37. The costs claimed under this heading are Mr Davidoff's costs of preparing for a previous Tribunal hearing which took place on 22 September 2022, chaired by Judge Nicol. The previous Tribunal did not allow the recovery of these costs by Mr Davidoff and, in a decision dated 18 November 2022 refusing permission to appeal, Judge Nicol stated that Mr Davidoff's claim for costs had "no basis". There is no evidence before us that the Upper Tribunal overturned the previous Tribunal's decision. Accordingly, we are satisfied that it has already been finally determined that these sums are not payable.

*Professional Fees £1,080*

38. This amount is made up of surveyor's fees in the sum of £480 and £600 which were incurred by Mr Mazin in connection with investigating the

water penetration from Flat 2 into Flat 1. Mr Mazin sets out the procedure which he adopted and his findings in a letter dated 25 May 2021. Applying our knowledge and experience as an expert Tribunal, we are satisfied that the approach taken by Mr Mazin was reasonable and appropriate.

39. In our expert knowledge and experience, it is not unusual for it to take several visits to locate and remedy leaks, especially when (as in the present case) there appears to be more than one source of the water. Further, the services in the relevant bathroom were to some extent concealed. In addition, no alternative quotations for this work or expert opinion to the effect that it went beyond what was reasonable have been provided. In all the circumstances, we are satisfied on the balance of probabilities that these costs are reasonable and payable.

*Surveyors fees £600.00*

40. Mr Cleaver stated that these costs were incurred in obtaining an obligatory asbestos report. He explained that a fire risk assessment had been obtained in the previous year but not an asbestos report. We accept this explanation and find that this sum is reasonable and payable. Again, no alternative quotations have been obtained.

*Accountancy Fees £780.00*

41. Mr Ciampi asserted that he had previously instructed accountants for the sum of £350. However, he has provided no up to date written alternative quotations in support of his submission that these costs are too high. Further, we note that a landlord does not have to use the cheapest accountant if the relevant costs fall within a reasonable range. On the very limited evidence before us, we find on the balance of probabilities that these costs fall within the reasonable range and payable.

*Buildings insurance*

42. The parties confirmed that they had no new points to make which had not already been made (see above). Mr Cleaver stated that Urang receives a commission of 12.5 % of the premium for obtaining quotations through a broker, often testing the market through a second broker, and then performing a claims handling role throughout the year. He pointed out that there have been complicated insurance claims concerning the Property. We accept this evidence and find that the commission of 12.5% is reasonable. Accordingly, for the reasons set out above we find that the charges under this heading are reasonable and payable.

The 2023 estimated service charge costs

43. As stated above, the Tribunal exercised its case management powers pursuant to rule 6 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in favour of the Applicants so as to allow Mr Cleaver to be questioned concerning the reasonableness of any budgeted service charge sums for the service charge year 2023 in excess of £1,000 in total (£125 per lessee). The management fees are provided for in the Management Order and are not disputed.

*Insurance £9,360.13*

44. The Tribunal finds that this was a reasonable sum to allow for in the budget because it was based on the previous year's premium (which we have found to be reasonable and payable).

*General Building Repairs/Works £4,500*

45. Having regard to size and nature of the Property and to the fact no major work has been carried out to the Property for a considerable period of time, we are satisfied it was reasonable for Mr Cleaver to allow the sum of £4,500 in respect of general repairs/building works in his budget for this year.

*Reserve fund £5,000*

46. No major works have been carried out since the Tribunal issued its decision dated 26 February 2021. The Property was in a poor state of repair at that time (see below). In all the circumstances and having taken into account the reserve fund contributions in previous years, we are satisfied that it was reasonable to allow for reserve fund contributions of £5,000 in the budget for this year.

### **Application 3: the application to extend the Management Order**

47. This is Ms Heathcote-Drury's application to extend the current Management Order for a period of two years.
48. The Tribunal began the hearing of this application by asking Mr Cleaver to explain his proposed plan for managing the Property if his appointment were to be extended. The Tribunal also asked Mr Cleaver whether he intended to seek to take affordability concerns (which had been raised by some of the Applicants during the course of the hearing) into account when scheduling major works. After this, Mr Ciampi had the opportunity to question Mr Cleaver concerning his objections to the extension of the Management Order.

49. Mr Ciampi expressed the view that these initial questions were favourable to Mr Cleaver. Ms Heathcote-Drury expressed concern that the Tribunal, though its initial questions of Mr Cleaver, may be sanctioning delays to certain major works which she said are of far greater benefit to her than to Mr Ciampi because she is a resident leaseholder and he is not. She stated that a dangerous structure notice has been served by the local authority and that the current state of the Property is a risk to her personal safety and that it could potentially lead to her death.
50. It was explained to the parties that the Tribunal had asked Mr Cleaver to set out his proposals for managing the Property and concerning whether or not he intended to seek to take affordability into account when scheduling major work so that the lessees would know his position before questioning him. Further, if the Management Order were to be extended, Mr Cleaver would, of course, have to comply with any legal requirements and would have to take all relevant matters into account in scheduling the work. The Tribunal was not seeking to absolve Mr Cleaver of any potential responsibilities if the Management Order were to be extended, but rather the Tribunal was seeking to ascertain his current thoughts and reasoning so that the parties and the Tribunal would be in a better position to question him.
51. Ms Heathcote-Drury sought to make representations concerning why any extension of the Management Order should be for two years rather than for five years. The Tribunal declined to hear these representations because, as stated at the hearing, if the Management Order were extended, the Tribunal would only be minded to extend it for two years, in any event. Mr Cleaver had accepted this, and Mr Ciampi was arguing that there should be no extension and that the management of the Property should revert back to the freehold company. Accordingly, no party was advocating an extension of the Management Order for a period in excess of two years and it therefore would not have been a good use of time to hear argument on the issue.
52. Mr Cleaver confirmed to the Tribunal that he was willing to remain the Tribunal appointed Manager of the Property for the period proposed. He was appointed in October 2022 in place of Mr Davidoff. There was then a handover period and Mr Cleaver stated that, following the handover, he effectively only had a period of a year and a month or two before his term as Manager was due to expire. This term was then extended until the final conclusion of these proceedings. However, there were insufficient funds available to enable him to carry out proposed major works and there were also disputes to be resolved concerning the reasonableness and payability of service charges.
53. In addition, Mr Cleaver stated that Mr Ciampi had been asserting that Mr Cleaver was required to consult the lessees before preparing service charge budgets and before carrying out works which were not major

works. At the hearing, Mr Ciampi was unable to identify any legal requirement to carry out such consultations. He referred the Tribunal to the Service Charges (Consultation Requirements) (England) Regulations 2003. However, insofar as these Regulations concerns works, they only concern qualifying major works.

54. Mr Cleaver noted that any disputes concerning the reasonableness and payability of the actual service charges for the years 2021 and 2022 and concerning the reasonableness and payability of the estimated service items in excess of £1,000 for the year 2023 will be resolved by this Tribunal's decision. Once Applications 1 and 2 have been finally determined, he will be in a position to collect the relevant service charges. Mr Cleaver stated that he would take appropriate legal action if necessary, and start carrying out major work to the Property once the necessary funds had been collected.
55. Mr Cleaver indicated a willingness to schedule major works, insofar as is appropriate, to take into account lessees' concerns regarding the affordability of the service charge costs. However, he agreed with Ms Heathcote-Drury and with the Tribunal that he would have to meet all legal obligations and act reasonably and responsibly in his scheduling of the work.
56. Mr Ciampi submitted Mr Cleaver had had over a year and a half as Manager and that this should have given him sufficient time to collect funds and to carry out major works. Dr Chaherli questioned Mr Cleaver concerning funds which he stated had been paid out by Aviva for work to be carried out to a balcony. He stated that these funds should have been ring-fenced for the balcony work but that they have instead been spent on other service charge items. Mr Cleaver gave evidence that when all funds had been transferred to him by Mr Davidoff, Mr Davidoff had not stated that any sum was reserved for work to a balcony. However, he agreed that, if he remained Manager, he would look into this issue further. The Tribunal found Mr Cleaver to be a careful and reliable witness and we accept his evidence.
57. Section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") includes provision that:

*"24.— Appointment of manager by a tribunal*

*...*

*(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.*

58. The circumstances which led to the Management Order being made are set out in a Tribunal decision dated 26 February 2021 (“the 2021 Decision”). In the 2021 Decision, the Tribunal stated:

*24. The Tribunal heard oral expert evidence from Mr Bond BSc Hons Dip HE ARCH MFPWS MRICS on behalf of the Applicant and from Mr Rumun BSc (Hons) MRICS on behalf of the Respondent.*

...

*27. Mr Rumun informed the Tribunal that his instructions were limited to inspecting the rear of the Property and that he had not anticipated being called to give expert evidence. Both experts gave evidence that significant maintenance and repair is required to the rear of the Property, although the precise nature and extent of the work is not agreed. Mr Rumun declined to consider in any detail the condition of the front façade because this matter was outside the scope of his instructions.*

*28. Mr Bond gave evidence that the front façade of the Property has not been adequately maintained and that, on 2 July 2020, he personally observed pieces of masonry falling from a height onto the pavement and onto Applicant’s front accessway. He gave oral evidence that falling masonry is caused by inadequate decoration cycles that he has seen photographic evidence showing that further masonry fell from the front façade in the week before the hearing.*

*29. The Applicant referred the Tribunal to notices served on the Respondent by the Royal Borough of Kensington and Chelsea requiring work to be carried out to the Property and it is in fact common ground that the exterior and common parts of the Property have not been adequately maintained, repaired or redecorated (although there is considerable disagreement concerning the reasons for this with the parties seeking to blame each other).*

*30. Having carefully considered the evidence we heard and the documents to which we were referred, the Tribunal is satisfied, in particular, that the front façade of the Property requires maintenance, repair and redecoration. The Tribunal finds that the current condition of the front façade is in breach of clause 2(a) of the Fifth Schedule to the*

*Applicant's lease. This alone is sufficient to satisfy the requirement at section 24(2)(a)(i) of the 1987 Act.*

*Whether it is just and convenient to appoint a manager*

*31. It is common ground that relations between the parties to these proceedings have broken down and that the front exterior, rear exterior and common parts of the Property are all in need of maintenance, although the precise nature and scope of the work required is not agreed. The Respondent's representatives refer in their Statement of Case to work which has been outstanding for over 5 years.*

59. Mr Ciampi is correct in stating that Mr Cleaver has been the Manager of the Property for over a year and a half and that proposed major works have not been completed. However, the Tribunal accepts Mr Cleaver's evidence that he does not have sufficient funds to carry out the major works. Further, he cannot potentially enforce the payment of service charges until the reasonableness and payability of the disputed charges had been determined by the Tribunal.
60. We accept Mr Cleaver's assurance that he will actively pursue any lessees who are in arrears for the payment of service charges following the final determination of these proceedings and that he will then carry out the outstanding work to the Property insofar as it can reasonably be completed within the remaining period of his appointment. Accordingly, the Tribunal is satisfied on the balance of probabilities that a variation extending the duration of the Management Order by 2 years will meet the criteria set out at paragraph 24(9)(a) of the 1987 Act.
61. The Tribunal must then go on to consider whether it is just and convenient in all the circumstances of the case to vary the Management Order by extending it for a period of two years. Mr Ciampi and Dr Chaherli submitted that management of the Property could safely be returned to the freehold company of which the lessees are members. They stated that the Property would initially be managed without the use of managing agents, with the possibility of instructing managing agents after the major works had been completed.
62. Mr Ciampi and Dr Chaherli stated that the Property had only fallen into disrepair for a brief period prior to the 2021 decision due to the difficulty in sourcing contractors during the Covid 19 pandemic. Mr Ciampi also stated that he would, if need be, personally step aside if this would lead to Ms Heathcote-Drury feeling included in the management of the Property. His proposal was that Dr Chaherli would remain involved in the management.
63. Ms Heathcote-Drury stated in no uncertain terms that this would not assist. Further, it is apparent from the manner in which the parties



sought to interrupt each other during the hearing and from correspondence sent to the Tribunal that relations between Ms Heathcote-Drury on the one hand and Mr Ciampi and Dr Chaherli on the other have completely broken down. Further, this Tribunal cannot go behind the findings and reasoning which led to the making of the Management Order, which are set out in the 2021 Decision.

64. In addition, we are not satisfied that those acting on behalf of the landlord freehold company have the necessary knowledge and skill to initially manage the Property themselves as proposed by Mr Ciampi. Major works have been outstanding for a considerable period of time and the Tribunal has been informed that several lessees are in arrears. On being asked whether he was familiar with section 42 of the Landlord and Tenant Act 1987, Mr Ciampi stated that it was something he would “google” if management was returned to the freehold company. As stated above, he misunderstood Judge Powell’s Directions and the nature and scope of the Tribunal’s jurisdiction in these proceedings. Although the 2021 Decision expressly provides at paragraph 52 that the freehold company may not pass any of its costs incurred in instructing Mr Rumun in connection with the proceedings before the Tribunal to the Applicant through the service charge, Mr Rumun’s invoices were sent to Mr Davidoff by those acting on behalf of the landlord freehold company to be passed through the service charge.
65. In all the circumstances, the Tribunal finds that it is just and convenient to vary the Management Order so as to extend the appointment of Mr Paul Cleaver as Manager of the Property until 4 November 2026. This date is two years from the date of the Tribunal’s decision because, until he receives a copy of the Decision, Mr Cleaver will not be in a position to proceed with the matters which need to be addressed. No other variation will be made to the terms and conditions of the existing order.
66. The Tribunal makes no direction as to how the major works should be scheduled because the Tribunal does not have all the information before it which is needed to make such a decision and it is, in any event, the role of the Manager, to manage this Property. It is hoped that the management of the Property will proceed without difficulty going forward. However, we note that the Management Order includes express provision for applications to be made to the Tribunal for further directions.

#### **Cleaver’s costs in connection with these Tribunal proceedings**

67. It is not in dispute that these costs are potentially recoverable pursuant to the terms of the Management Order at the rate of £250 per hour plus VAT. Mr Cleaver initially stated that he estimated that costs had been incurred in the sum of £10,000. However, on being questioned by the Tribunal, he explained that this was an estimate of his costs if his term as Manager were not extended (in which case there would be costs

incurred in connection with the handover process in addition to the costs in connection with the Tribunal proceedings).

68. The documents and information which Mr Cleaver has provided for the hearing were likely to have been readily available to him in his role as Tribunal appointed Manager. We accept that it was reasonable for Mr Cleaver to attend the whole of the two day hearing because, having regard to the nature of these proceedings, he could have been called upon at any time. We also take on board Ms Heathcote-Drury's point that Mr Cleaver was able to silently carry out work during the hearing whilst the focus was on the evidence of Mr Davidoff, which it was for most of day one. However, we note that his ability to work would nonetheless inevitably have been restricted. Balancing all these factors we assess Mr Cleaver's reasonable costs incurred in connection with these Tribunal proceedings in the sum of £3,000 + VAT (£3,600). The sum of £3,600 is therefore payable by the lessees under this hearing.

### **Mr Ciampi's application dated 30 October 2024**

69. On 30 October 2024, Mr Ciampi's applied for relief pending the issue of this Tribunal Decision. Mr Ciampi's application dated 30 October 2024 is dismissed because the Decision has now been issued.

**Name:** Judge N Hawkes

**Date:** 4 November 2024

### **Rights of appeal**

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.

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.

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.

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.

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.

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