



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

Case reference : **LON/00AG/LAM/2024/0120**

Property : **20 Rosecroft Avenue, London NW3**

First and second Applicants : **Ms Kay Kimkana (flat1) and
Mr Humphrey Johnson and Dr Mathina
Darmalingham (flat 3)**

Representative : **Mr. Stuart Swycher- (representative of
Ms Kimkana)**

Third and Fourth Applicants : **Mr Ian Shelley and Janet Shelley (flat 4)
Mr Constantinos Cagimanolis and Mrs
Ramona Cagimanolis (flat 5)**

Representative : **Mr Jonathan Ross- Solicitor Keystone
Law**

Respondent : **20 Rosecroft Avenue Tenants
Management Company**

Type of application : **Appointment of Manager**

Tribunal member(s) : **Judge Daley
Mr K Ridgeway- Professional Member
Mr O Miller- Lay Member**

**date of hearing
And Venue** : **24 & 25 October 2024 at 10 Alfred
Place, London WC1E 7LR**

Date of decision : **9 December 2024**

DECISION

1. In accordance with section 24(1) Landlord and Tenant Act 1987 [Mr Kingsley of [K & M Property Management Limited] ('the Manager') is

- appointed as manager of the property at [20 Rosecroft Avenue ("the Property").
2. The order shall continue for a period of 3 years from [**the date of this decision**]. Any application for an extension must be made prior to the expiry of that period. If such an application is made in time, then the appointment will continue until that application has been finally determined.
 3. The Manager shall manage the Property in accordance with:
 - (a) The directions and schedule of functions and services attached to this order;
 - (b) The respective obligations of the landlord and the leases by which the flats at the Property are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - (c) The duties of a manager set out in the Service Charge Residential Management Code ('the Code') or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993.
 4. The Manager shall register the order against the landlord's registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.
 5. An order shall be made under section 20C Landlord and Tenant Act 1985, that the Respondent's costs before the Tribunal shall not be added to the service charges.

Introduction

6. This is a decision on an application by the Applicants, Ms. Kimana, leaseholder of flat 1. And Dr. Dharmalingam and Mr. Johnson of flat 3. By an application dated 12 June 2024, made under section 24 of the Landlord and Tenant Act 1987 ('the section 24 application') the Applicants applied for an order appointing Mr Paul Cleaver, (of Urang, Property Management Services), as manager of the premises.
7. The freeholder (and the management company currently responsible for the management of the subject premises) is 20 Rosecroft Avenue a Tenants Management a company owned by the leaseholders, with one share allocated to the leaseholder(s) of each flat.
8. The premises which is the subject of the application is a converted Victorian house, in a conservation area, which has been divided into 5 flats.
9. For several years, prior to this application, the management of the subject premises, such as the upkeep of the common parts had been

undertaken by Mr Johnson the leaseholder of flat 3. However, in recent years there has been increasing disagreement about the management of the subject premises.

10. This led to the decision to appoint Whitestone Estates as managing agents, however, their appointment which begun 01 May 2022, was short lived and ended in November 2023.
11. The principal protagonists are the Applicants the leaseholders of flats 1 and 2, and the leaseholders of flats 4 and 5, who have been named as third and fourth applicant in these proceedings.
12. The Tribunal was provided with a bundle and supplementary bundle of over 1465 pages, much of which comprising details of the history of disagreements and antagonism between the parties. As such the Tribunal decided that given that the parties continue to have a relationship as leaseholders, there was little value in repeating or apportioning blame for these issues. However, the disagreements have meant that both parties complain of a lack of management which has led to difficulty in agreeing and collecting the service charges and resulted in on-going disrepair at the premises.
13. Against that background, the Applicants served a Section 22 notice on 8 May 2024, on the grounds that:- “1. The landlord is in breach of their obligations owed to the tenants under the lease. 2. The landlord has made/proposed unreasonable service charges.3. The landlord is in breach of the RICS Service Charge Residential Management Code of Practice approved by the Secretary of State under Section 87, Leasehold Reform, Housing and Urban Development Act 1993.4. Other circumstances exist which make it just and convenient to appoint a manager.”
14. The Applicant applied to the Tribunal for an appointment of manager order under section 24 of the Landlord and Tenant Act 1987 (‘the 1987 Act’).
15. Following the Application to the Tribunal directions were given on the papers on 3 July 2024. Following a written request from two of the leaseholders, Judge Nicol directed that the leaseholders of flats 4 & 5 (Mr and Mrs Shelley and Mr & Mrs Cagimanolis who had applied to be joined as interested parties be joined as Applicants to these proceedings.
16. It was noted that although they agreed to the appointment of a manager and did not dispute that grounds existed for an appointment, they were opposed to the appointment of Mr Paul Cleaver. At the date of the hearing put forward Mr Kingsley as an alternative manager.

The issues

17. The issues for the Tribunal to determine are:-Whether the Tribunal is satisfied that the Applicant has established any of grounds specified in section 24(2) of the 1987 Act for making an order; (ii) whether it is just and convenient to make an order in all the circumstances of the case; (iii) whether the proposed manager is a suitable appointee; and if an appoint(iv)the terms and duration of any appointment.

The Law

18. Section 24 of the Landlord and Tenant Act provides: (1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies— (a) such functions in connection with the management of the premises, or, (b) such functions of a receiver, or both, as the tribunal thinks fit.

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

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

The Hearing

19. The hearing which was held over two days was attended by the parties listed above, although Mrs Shelley and Mrs Cagimanolis did not attend on the first day. In addition, both Mr Paul Cleaver and Mr Kingsley attended on the first day of the hearing and answered questions concerning how they would undertake the role of manager at the premises.
20. Ms Kimkana (the first applicant) was assisted by Mr Stuart Swycher, who although he had been a former solicitor was at the hearing in the capacity of a lay representative, he was not representing Dr Darmalingham or Mr

Johnson although the cases put forward for appointment of Mr Cleaver was supported by all three leaseholders.

21. The leaseholders of flats 4 & 5 were represented by Mr Jonathan Ross a solicitor of Keystone Law. Flat 2 was owned by a company, who did not appear and had not made any representations.

Preliminary Matters

22. At the hearing, Mr Swycher objected on behalf of the first applicant to Mr Kingsley being put forward as manager. He noted that no directions had been made for the leaseholders of flats 4 & 5 to put forward their own manager. He submitted that no application had been made by the leaseholders, and that Mr Kingsley had not met with the first or second applicants. There was no information on the public liability insurance cover provided by his company. He also referred to the lack of a management plan.
23. He stated that the Tribunal should determine the application based on the management plan put forward by Mr Cleaver which was a generic plan used by the Tribunal and was being put forward by the first and second applicants.
24. On behalf of the 3 & 4 applicants, Mr Ross noted that Mr Kingsley had served a witness statement in August 2024, and that the first and second applicants were aware that the 3 & 4 Applicants objected to the appointment of Mr Cleaver. They were also aware from the correspondence between the parties that they intended to put forward Mr Kingsley.
25. He noted that plan put forward by Mr Cleaver was generic and followed the format of the Tribunal's draft order. He stated Mr Kingsley had previous appointments, and given this Mr Kingsley could broadly adopt the plan that was within the bundle. He submitted that a further plan had not been written by Mr Kingsley to save costs.
26. The Tribunal noted the lack of directions concerning the third and fourth applicant nominating a manager, however, it had regard to the correspondence from the third and fourth applicants which set out their intention to put forward Mr Kingsley. It had regard to the Tribunal Procedure (First-tier Tribunal) Property Chamber) Rules 2013, rule 7, (b) which enabled a tribunal to give a direction orally during a hearing. The Tribunal asked itself whether there would be any prejudice to the First and Second Applicant should it consider Mr Kingsley as a potential manager?
27. It noted that there was a witness statement within the bundle setting out Mr Kingsley's information and how he intended to carry out the responsibilities of management.

28. The Tribunal also had regard to the overriding objective particularly Rule 3 (b) which required the Tribunal to avoid unnecessary formality and seek flexibility in the proceedings. It also noted that the Tribunal's role in these proceedings was to determine whether circumstances existed for the appointment of a manager, and if it considered it necessary the Tribunal was making a decision, which was normally the prerogative of the freeholder. In this regard the Tribunal considered that to carry out its responsibilities, it would benefit from hearing from both proposed managers prior to make its decision.
29. Accordingly, the Tribunal decided to allow the third and fourth respondent to put forward Mr Kingsley.
30. The Tribunal decided that it would adopt the following procedure; The Tribunal decided that it would hear from Mr Cleaver first, and that as such it would be inappropriate for Mr Kingsley to be present, it would then hear from Mr Kingsley and would then determine whether the conditions set out in Section 24 were met.
31. Its decision to hear from the proposed managers was without Prejudice to any decision concerning whether the circumstances existed at the property for a tribunal appointed manager.

Paul Cleaver of Urang Property Management Limited

32. The Tribunal heard from Mr Paul Cleaver, who was the managing director of Urang Property Management Limited, who provided a complete property service which encompassed all aspects of property management.
33. Mr Cleaver in his witness statement set out the following:- "... I have worked within the field of property management for over 23 years, and I have worked at Urang since 2001. Between 2001 and 2008 I was a Director of Urang Limited, responsible for finance, business administration and property management. Since 2008 I have been a Director of Urang Property Management Limited, responsible for finance, business administration and property management. Urang Property Management Limited is part of Urang Group Limited."
34. Within his appendices he had helpfully provided, his insurance details, his complaints procedure, the management plan and handover checklists.
35. Mr Cleaver was asked about the size of the Urang. He stated that there were 8,500 flats, and 45 property managers. Each property manager had about 100 flats.
36. He stated that he specialised in block management and that he had developed an expertise in properties which required a tribunal appointed manager. Mr Cleaver told the Tribunal that he had built a good team behind him and that many of the properties that he had been appointed

to manage, had continued with his company as managing agent once the initial appointment had ended.

37. He was asked about the management order which was within the bundle. He stated that he used a template put forward by the Tribunal. Mr Cleaver told the Tribunal that normally it was his experience that the Tribunal preferred that you depart from the template as little as possible. He stated that if appointed he would carry out a survey and put together a schedule of work and should the generic template prove inadequate would ask the Tribunal for additional powers if it was needed.
38. He was asked by the Tribunal for information about how he would manage the property on a day-to-day basis, and what would be his first steps. He stated that he would use a property manager who would be responsible for managing the property and liaising with the leaseholders. He said that initially he would collect a budget of £1000.00. This would be used to clean and test the fire alarm and carry out fire safety work which was in his opinion the immediate priority. He would then put together a budget for the service charges. He was aware that there were some funds in hand of approximately £2000.00. He was aware of issues with the leases in that the leases did not make provision for 100% of the service charges, and this would be remedied.
39. Mr Cleaver told the Tribunal that the building was “quite tired in terms of repair, the steps were not safe. There was a lack of fire alarm, and the property needed decorating. However, there was a need affordability into account to ensure that the leaseholders could afford the work.
40. He stated that he would appoint a property manager to do the day-to-day management as this was allowed by the Tribunal, however he would act as the ultimate decision maker.
41. During cross examination he was asked about the other services carried out by his company such as cleaning, surveying and building and whether there was a potential conflict of interest, as there was the possibility that his company would tender for this work. He explained that each unit in the company operated separately so that there would be no conflict of interest. He stated that legal action, if necessary, would be taken by a lined company.
42. In answer to specific questions about how the service would be provided. Mr Cleaver told the Tribunal that both his finance department and property managers were based in South Africa. The property manager who would be Ms Kari Van Wyk she was currently undertaking her TPI course. When asked about how this would work in practice, he stated that the time difference between the UK and South Africa was about an hour time difference and he did not consider that this was a barrier.
43. He would have remote meetings with Ms Van Wyk every Monday morning where they would discuss issues that had arisen and decisions

that needed to be taken. Regarding her liaising with the leaseholders, he stated that she would also be able to meet with the leaseholders by Teams and would be available to deal with any issues which arose on the phone. In respect of inspections of the property, Mr Cleaver told us that he had teams of property inspectors, who would inspect four times a year and carry out video inspections. He stated that this model had been used successfully in other tribunal appointments. He was asked about the time commitment to manage the property; his estimate was between 2.-3.5 hours a week.

44. In respect of the remote model of management, the Tribunal noted that this was not specifically set out within his witness statement.
45. He was asked by Mr Ross about the reviews on Google for Urang which had only received an average of 3 stars, and issues had been raised about the responsiveness of the company. Mr Cleaver accepted that there were mixed google reviews, and that some were negative, however his position was that there were leaseholders who for example had legal action taken against them, and it was not surprising that those leaseholders would provide negative reviews. Also, where services had gone well it was less likely that those who were in receipt of good service would be motivated to provide positive reviews. He accepted that this was something that the company was actively monitoring and considering the feedback. He stated that the company had increased in size and that they were carefully monitoring reviews and were working to put things right.
46. He told the Tribunal that he had no prior relationship with the leaseholders, and that he assumed they had come across him by looking at previous tribunal decisions. He stated that although he had no prior professional relationship with any of the leaseholders, he had subsequently been asked to manage a business by Mr Swycher. He stated that he had not assisted the first or second applicants in applying to the Tribunal although he had provided some limited advice and had reviewed the application documents to make sure that it made sense.
47. He told the Tribunal that he had seen the correspondence between the parties, and he understood that the relationship had broken down with the leaseholders, however he understood that his duty was to the Tribunal rather than to any leaseholders who had appointed him. In answer to questions he stated that the leaseholders were aware that many of the functions of management would be carried out by a manager who was based in South Africa.
48. The Tribunal had also been provided with details of his company's indemnity insurance, and heard details from Mr Cleaver that he understood the RICS Code of guidance and would manage the property in line with the code of guidance. Mr Cleaver discloses that he would receive commission for placing insurance, as this was an industry norm. He had set out information concerning his fees.

49. In answer to questions from the Tribunal concerning conflicts of interest, he explained that in respect of any work tendered for by Urang would operate to the same deadline as other companies and all tenders would be blind and opened together, given this his company would not have an advantage.
50. He told the Tribunal that he had experience of managing other properties which were like the subject property and were in a similar condition.

Mr Kingsley of K & M Property Management Limited

51. Mr Kingsley had also provided a witness statement, he had also been appointed to manage properties on behalf of the Tribunal, and like Mr Cleaver had very recent appointments. He had 40 years' experience as a property manager. He had established his property management business K M Property Management since 2007. He set out that his company was regulated by RICS and is an ARMA Q member.
52. In answer to Mr Swycher's questions concerning his employees, after some hesitation confirmed that there were 8 employees.
53. He told the Tribunal that He was initially contacted by Mr Shelley, He had not been told that he I had been recommended. Mr Shelley had told him about the building and asked whether I would be interested in managing it. This occurred in June 2024.
54. Mr Kingsley stated that he was asked to provide a management contract which he did. He had inspected the property, although he had not met all the owners he had met with the third and fourth applicants. He stated that he did not think it was appropriate to meet the first and second applicants. As he considered that it would be better and more appropriate to meet with them if he was appointed. He was shown around the building by Mr Ross and the third and fourth Applicant.
55. He told the Tribunal that he managed about 100 properties which ranged from five to twenty units per property in size although he had one block which was made up of 85 units. He employed 5 property managers. He also set out that he had been a Tribunal appointed manager for several properties.
56. Mr Kingsley told the Tribunal that he had not discussed the work which needed to be undertaken at the property. However, he had formed the view that the following work would need to be undertaken as the building was in substantial disrepair, and that work was needed to the drainage, guttering downpipes, roofing, and external repairs and decorations including the windows which appear to have dry rot.
57. He also stated that it would be necessary to undertake a Health and Safety report. Mr Kingsley stated that the first step would be to send a

welcome letter to leaseholders introducing himself to the leaseholders. He would then set up a meeting with the leaseholders. He confirmed that in respect of the appointment, he always managed tribunal appointments personally although he would be assisted by others within his office. He confirmed that if appointed he would personally visit the premises at least quarterly.

58. He was asked about how he would deal with antisocial behaviour and set out the steps that he would take on behalf of the leaseholders. He confirmed that he had experience of dealing with the management of properties where there were disagreements between the leaseholders. He stated that he was aware that notwithstanding who he was appointed by his role was to be impartial.
59. He was aware that the leases did not add up to 100% of the service charges, however he felt that this could be dealt with by a sweep up clause within the lease. Mr Kingsley was asked about whether K & M had building surveyors. He told the Tribunal that he did not have in-house surveyors, however he had good links with local surveyors who he had engaged with in the past.
60. Mr Kingsley told the Tribunal that he understood that he was answerable to the Tribunal and not to any individual. He told the Tribunal that there were some buildings that he managed where the leaseholders had initially supported his appointment but who no longer do so, as they had not expected him to be impartial. Equally there were some leaseholders who did not support his appointment who are very supportive now.
61. Mr Kingsley accepted that he had not prepared a management plan, however he referred to the plan which had been put forward by Mr Cleaver which he considered to be generic, he stated that he would be happy to manage in accordance with the plan. He noted that the repairs which needed to be undertaken would be costly and that this might not accord with individual leaseholders' budgets however in his view it was likely to be more cost effective to complete the work than to put it off in stages.
62. He reiterated his belief that it was a personal appointment and that should he be the appointee he would manage the building. He was asked how long the appointment should be and he stated that in his view it should be at least 3 years.
63. The Tribunal was provided with the terms of appointment for both Mr Cleaver and Mr Kingsley. Prior to the hearing Mr Kingsley had not provided a copy of his indemnity insurance however, during the hearing, which was held over two days, a copy of his insurance certificate was provided.
64. The Tribunal was provided with a helpful comparison of the fees of both managers. Mr Cleaver's management fees were £2,250.00 per annum whereas Mr Kingsley's fees were £3600 per annum. Mr Kingsley's fees-

were inclusive of his inspecting the property, he had included 3 inspections of the property and also arranging and chairing residents' meetings.

65. Mr Cleaver charged an additional rate for attending meetings. He also had a sliding scale of hourly fees depending on the level of manager; his fee was £250 per hour for additional work. Surveyors' rates were £170.00. Senior property managers were charged at a rate of £175.00 and property managers were charged at £150 per hour. Mr Kingsley's model was different in that he would undertake the work personally; any additional work would be charged at £175.00 per hour.
66. Mr Cleaver had surveyors who could be used for major works at the charging rate referred to above. His additional charges were 12%, plus 1.5% for Health and Safety, approximately £1,200 for a specification of work and any additional fee required for planning. Mr Kingsley model was to charge 4% for the general management of the work, and to engage an external surveyor for oversight of the project and he assessed their cost to be normally 7% of the costs of the work. Both had set out charges for dealing with matters such as remortgage enquires and consents to sublet. Although Mr Kingsley included matters such as dealing with transfers of leases and enquires within this fee whereas Mr Cleaver made additional charges of £200.00 in relation to the lease transfer and £150 per enquiry. Mr Kingsley also did not charge a commission for dealing with Insurance.

Whether a manager should be appointed?

67. The Tribunal having heard from both parties proposed managers then went on to consider whether circumstances existed at the premises which made it just and convenient to appoint a manager.
68. The Tribunal at the outset of considering this issue, noted that there had been disagreements and a degree of animosity between the parties. It decided that it could not usefully explore all the disagreements which had occurred which had given rise to the dysfunction which led to the previous managers Whitestone Estates ending their appointment.
69. It accepted that there was broad agreement between all four applicants that a manager should be appointed. However, notwithstanding this, it was for the Tribunal to satisfy itself that circumstances existed that made it just and convenient to appoint a manager, rather than for the convenience of the parties.
70. The Tribunal considered all the evidence in this case, which included a voluminous bundle and photographic evidence. It heard and accepted evidence from Ms Kimkana that the previous managing agent had proposed a budget for the service charges of 100% of the previous year's charges from £2000 per year to £4000. However, this had subsequently

been reduced with the intention of assisting the leaseholder of flat 3, to sell their flat.

71. The Tribunal heard that due to this dispute although insurance had been paid by the third and fourth leaseholder on behalf of the leaseholders, no service charges had been agreed or collected for the current service charge year. It accepted that the lease did not make proper provision for 100% collection of the service charges, and that the voluntary arrangement which had been in place had broken down. At the hearing the parties agreed a formula which would mean that the service charge apportionment would go forward by 100%. The agreed percentages were 17.4% for flats 1 & 2, 21.733% for flats 3-5.
72. The Tribunal heard that the lease covenant in respect of repairs was not being enforced due to disagreements concerning the potential cost of the work. There was also an issue on whether the service charge demand should be based on affordability, rather than the sums that were required to complete the outstanding work.
73. The Tribunal heard and accepted evidence that safety inspections had not been carried out. It noted that as a TMO, it was for the leaseholders as shareholders to appoint a company secretary and to manage the company. However, the broad and wide-ranging nature of the disputes between the leaseholders meant that currently there was no management in place.
74. The Tribunal noted that there were issues of alleged anti-social behaviour, however, as this involves the possible neurodiversity of one of the occupants it has chosen not to refer to the specific details within the decision.
75. The Tribunal noted that of the leaseholders at the hearing, there was broad agreement between them that it was necessary for the appointment of a manager in order for the repairs which needed to be undertaken to reach the stage where a surveyor was appointed, a schedule of works agreed and the required notices to be served.
76. The Tribunal was heartened by the fact that the parties had taken a pragmatic approach and agreed for the percentages to be paid to ensure that it was possible to collect 100% of the service charges. However, it accepted that the terms of clause 3(3) of the lease had been breached, on account of the Respondent's failure to carry out the repairs and maintenance at the property.
77. The Tribunal were provided with a Skeleton Argument on behalf of the third and fourth applicants. It also heard closing submissions from both Mr Swycher and Mr Ross. Which included case law upon which they relied. Although it has not referred to the matters raised verbatim it took account of the submissions in reaching its decision.

The Decision of the Tribunal

Whether a manager should be appointed?

78. The Tribunal found that it was just and convenient to appoint a manager. The Tribunal make a finding that the property is in serious state of disrepair and in the circumstances that exist the leaseholders have not been able to run the tenant's management organisation or put in place a manager with the authority to serve demands and put in place the action needed to carry out the repairs.
79. Although part of the application referred to the fact that an unreasonable demand had been made for service charges, the Tribunal had no way of knowing if this was correct; as there was no proper budget for the Tribunal to consider, and given this it made no finding that this was the case.
80. The Tribunal was concerned that the service charges were unreasonably being influenced by the leaseholders. However, this was not a ground upon which a decision could be made by the Tribunal it speaks to the dysfunction which exists at the premises.
81. The Tribunal is nevertheless satisfied that grounds exist which make it just and convenient for a manager to be appointed. It took account of the fact that the obligations of the lease are not being fulfilled by the freeholder, in respect of maintaining the property in accordance with the lease, exploring and if necessary, dealing with anti-social behaviour, in accordance with the lease and collecting a service charge to ensure that there are sufficient funds to meet the obligations under the lease.
82. The Tribunal although not engaging with the dysfunctional nature of the relationship between the leaseholders and the causes of this, are aware that this presents a barrier for managing the property going forward.
83. It is for this reason that the Tribunal having determined that the Respondent is in breach of the obligations owed to the tenant under his tenancy and relating to the management of the premises in question and that it is just and convenient to make the order in all the circumstances of the case, has determined to appoint a manager in this case.

Who should the Tribunal appoint to manage the property?

84. The Tribunal having heard from both Mr Cleaver and Mr Kingsley were satisfied that both proposed managers were experienced and were aware of their obligations to the Tribunal, as Tribunal appointed managers. Both had recent appointments and had demonstrated that they had the necessary skills and experience to manage such properties.
85. The Tribunal had carried out a comparison of the fees, and although Mr Kingsley initial rate was higher. The Tribunal noted that he had included many of the aspects of his management within the initial fee. Given this,

the Tribunal considered that little, if anything, turned on the fees put forward by the managers.

86. The Tribunal therefore considered that the critical issue in this case is the management model that both managers put forward and which one the Tribunal considered right for the issues that existed at the property.
87. The panel noted that Mr Cleaver had established a very successful model of management using delegation and remote property managers, although he understood, that he remained personally responsible for the management of the property.
88. The Tribunal accepted that this model had been successful in the past, and that Mr Cleaver had demonstrated this by his success in being appointed by the Tribunal over 15 properties which had increased at the date of the hearing. Mr Kingsley had also set out that he had 6 Tribunal appointments and had at the date of the hearing also had further appointments.
89. Given this, the Tribunal's decision is based entirely on its professional opinion of what the Tribunal in its view considered is needed for this property, rather than a criticism of any management model put forward.
90. It was of the view, that where management was undertaken remotely, it would work best where leaseholders did not have any misgivings about the model of remote delivery, which was not the case here, both the third and fourth applicants had difficulties with this model.
91. The Tribunal was also of the view that the property needed the direct intervention of the property manager. Given this it found that the model put forward by Mr Kingsley would better fit the problems which exist at this property. He would be able to meet on site with both sets of leaseholders and establish a more direct means of communication which would assist in quickly resolving issues as they arose.
92. The Tribunal also considered that his model of personally inspecting the property was the correct approach for this property with its issues and in its current condition.
93. **For these reasons the Tribunal has decided to appoint Mr Kingsley for the period of 3 years.**
94. It was grateful for the work that Mr Cleaver put in and his willingness to take on the appointment, however for the reasons stated above the Tribunal has decided to appoint Mr Kingsley for a period of 3 years.

Name: Judge Daley

Date: 9.12.2024

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).

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondent or the Tribunal.
2. That no later than four weeks after the date of this order the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicants and the Respondent shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund).
3. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon 10 December 2024 become rights and liabilities of the Manager.
4. The Manager shall account forthwith to the Respondent for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.
5. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of Functions and Services attached.
6. By no later than [one year] from the date of the decision, the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the property up to that date, providing a copy to the lessees of the Property and the Respondent at the same time.
7. Within 28 days of the conclusion of the management order, the Manager shall prepare and submit a brief written report for the Tribunal, on the progress and outcome of the management of the property up to that date, to include final closing accounts. The Manager shall also serve copies of the report and accounts on the lessor and lessees, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new tribunal-appointed manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.
8. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- (i) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (ii) [Set] Demand and collect [ground rents,] service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (iii) [Set] Demand and collect his own service charge payable by the Respondent (as if he were a lessee), in respect of any un-leased premises in the Property which are retained by the Respondent.
- (iv) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- (v) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- (i) Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the Manager.
- (ii) Maintain efficient records and books of account which are open for inspection by the lessor and lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.
- (iii) Maintain on trust an interest-bearing account/s at such bank or building society as the Manager shall from time to time decide, into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.
- (iv) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

- (i) Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.

- (ii) The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondent and the lessees.
- (iii) The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.

Fees

- (i) Fees for the abovementioned management services will be a basic fee of £3600 per annum. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.
- (ii) Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a charge of [11]% of the cost This in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.
- (iii) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee.
- (iv) VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- (v) The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for a time basis.

Complaints procedure

- (i) The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.