



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/00HE/LAM/2024/0007

Property : Jace Court, Priory Road, St Austell,
Cornwall, PL25 5FL

Applicant : Laura Grace Ford
And other leaseholders

Representative : Laura Grace Ford

Respondent : Sedgemoor Campus Ltd

Representative : The Fountayne Group Ltd

Type of Application : Appointment of a Tribunal Appointed
Manager.

Proposed Manager : Mr Paul Kearton

Tribunal Member(s) : Mr W H Gater FRICS (Chair)
Mr M Woodrow MRICS

Date of Decision : 20 January 2025

DECISION

Landlord and Tenant Act 1987

The Tribunal determines that the Applicants have made out grounds under section 24 of the Landlord and Tenant Act 1987 for the appointment of a manager at Jace Court, Priory Road, St Austell, Cornwall, PL25 5FL but that the proposed manager should not be appointed.

The Tribunal orders under section 20C of the 1985 Act that none of the costs incurred by the Landlord in connection with these proceedings shall be treated as relevant costs for the purpose of any future service charge demand. Further, an order is made under paragraph 5A to schedule 11 of the Commonhold and Leasehold Reform Act 2002 that no administration charge in relation to these proceedings may be levied.

The Tribunal orders under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent reimburse the Applicant fees paid to the Tribunal in respect of the Application.

REASONS

The Application

1. By an application dated 25 June 2024, the Applicant applied to the First-tier Tribunal (Property Chamber) (“the Tribunal”), under section 24 of the Landlord and Tenant Act 1987 (“the 1987 Act”) for the appointment, by the Tribunal, of a Manager of the Property (“the AOM Application”).
2. The Tribunal President’s Practice Statement on Appointment of Manager Applications states, “The power to appoint a manager under Part II of the 1987 Act is a power which will be exercised by a Tribunal in order to resolve a problem in the management of a property. This will either be because the Tribunal is satisfied that any of the specific circumstances under section 24(2) of the Act apply and that it is just and convenient to make the order or that in accordance with section 24(2)(b) that other circumstances exist which make it just and convenient for the order to be made.”
3. The Applicant also made an application dated 8 May 2024 under S27A of the Landlord and Tenant Act 1985 for a determination of the liability to pay and reasonableness of service charges.

4. That application also seeks an Order under section 20C of the Landlord and Tenant Act 1985 preventing the Landlord from recovering the whole or part of the costs of these proceedings by way of a future service charge demand, together with an application under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 to reduce or extinguish any administration charge in respect of litigation costs which may be payable under the lease. The Tribunal determines that the S20C and Para 5A applications shall be deemed to be included in the application to appoint a manager.
5. The Section 27A service charge application is determined in a separate decision.
6. The Applicants are Laura Grace Ford [Flat 26], who represented the leaseholders and the following: -
 - Neil Batchelor Flat 21
 - Dawn and David Harris Flat 28
 - Sally and Ian Lewis Flat 7
 - Amy Jacob and Joe Baker Flat 24
 - Michelle Rendell Flat 20
 - Samuel Grose Flat 33
 - Jessica Buscombe Flat 14
 - Diane Davies Collins Flat 32
 - Chris and Pauline Buscombe Flat 2
 - Sharon le Cheminant Flat 3
 - Derry Robertson Flat 22
 - Dawn and Brian Bunce Flat 16
 - Andrea Mansell and Philip Templeton Flat 11
 - The Estate of the late Angela Stokes Flat 31
 - Chloe Duckett Flat 19
 - Sarah Gray Flat 25
 - Anna Minear Flat 12
 - Brian Blatchford Flat 23
 - Patrick Dobie Flat 27
 - Jacob Kirk Flat 13
 - Daniel Walters Flat 4
 - Georgina Ashby Flat 8
 - Judith Esterhuizen Flat 15
7. The Respondent to the Application is Sedgemoor Campus Limited, being the freeholder Landlord of the building containing the flats.
8. On 10 October 2024, Regional Judge Whitney issued Directions in response to an application from the Respondent granting an extension of 30 days to time limits in previous directions. The Judge referred to the failure of the Respondent to serve their statement of case and went on to direct that the Respondent would be barred from relying on evidence at the final hearing of this matter if they failed to comply.

9. On 5 November 2024 Regional Judge Whitney informed the Respondent that in view of the fact they had failed to comply as directed, they were barred as stated above.
10. The Tribunal inspected the exterior and common parts of Jace Court on 2 December 2024 in the presence of Applicants Miss Ford, Miss Buscombe, Mr Lewis and the proposed Manager Mr Kearton. No evidence was taken during the inspection save for factual information which assisted the Tribunal in carrying out the inspection.
11. The Hearing was held immediately after the inspection at Bodmin Magistrates Court and in addition to those present on the inspection, two more Applicants, Mr and Mrs Bunce, attended. The Respondent was neither present nor represented.

The Subject Property

12. Jace Court is a block of apartments close to the centre of St Austell in Cornwall. It is attached to Nya Court, a similar group of flats which together originally formed part of a former college building.
13. The building Jace Court is arranged mainly on three stories and is built with brick walls under a slate mansard roof, believed to be finished in felt.
14. Whilst Jace Court and Nya Court are attached, these applications relate only to Jace Court.
15. There are 31 flats in Jace Court, 23 of which are said to be members of the Residents Association.

The Lease

16. The Tribunal was provided with a copy of the lease of Flat 26, Jace Court, dated 4 December 2018. The parties to the Lease are the Landlord, Sedgemoor Campus Ltd and the Tenant at that time Alexander Mathew Penn.
17. The Lease was granted for a term of 125 years from 4 December 2018.
18. Clause 5 of the Lease obliges the Landlord to observe and perform the Landlord's covenants, inter alia, to insure, maintain and keep in good and substantial repair and condition, the structure of the building, the common parts, pipes drains and cabling, boundary walls and fences and all other parts not included in the demised flat.
19. Clause 5 of the Lease also sets out provisions for a service charge by which the Landlord may recover the cost of complying with Clause 5.
20. Clause 4 (4) of the Lease requires the Tenant to pay the Interim Charge and the Service Charge as defined in the Fifth Schedule.

21. The Fifth Schedule sets out the definitions appropriate to the service charge mechanism and provisions for payment by the Tenant. The Schedule requires the Landlord to certify service charge expenditure within three months of the end of an accounting period, with provision for the Tenant to inspect the receipts and vouchers relating to the Total Expenditure, within one month of certification.

The Hearing

22. The hearing was held at Bodmin Magistrates Court on 2 and 3 December 2024 to dispense with both applications.

Preliminary matters

23. The Tribunal noted that the Respondent was not present and that no representative had attended.
24. The Tribunal set out the proceedings for the next two days and noted that the two applications for Appointment of Manager and determination of service charges contained some assertions which went beyond the jurisdiction of the applications themselves. The Tribunal would therefore determine only those matters within said jurisdictions.
25. The Applicant requested that the following parties be included as Applicants being owners of flats at the property, Judith Esterhuizen Flat 15 and Gina Ashby Flat 8. The Tribunal admitted those parties.
26. The Tribunal also noted that Mr Lewis of Flat 7 had been included twice in directions in error and that Angela Stokes of Flat 31 had sadly passed away. The Tribunal corrected the duplication re Mr Lewis and accepts that the Estate of Ms Stokes may remain as a party.

The Applicants' case.

27. The grounds for the application may be summarised as failing to maintain the property in accordance with the lease, mismanagement of the accounts, with particular reference to the communal gas bill.
28. In their submissions the Applicants provided the following narrative account of the problems that they have encountered and their attempts to resolve those problems with the Landlord.
29. The applicant points to Clause 6(a)I of the lease which in terms states

“Subject to and conditional upon payment being made by the Tenant of the Interim charge and the Service Charge at the times and in the manner hereinbefore provided: -

- a) To maintain and keep in good condition and substantial repair and condition: - I The structure of the Building including the principal internal timbers and the exterior walls and the foundations and the roof thereof with its main water tanks main drains gutters and rain

water pipes (other than those included in the demise of any other flat in the building) and the structure of the balconies”.

30. Roof leaks. Using Flat 27 as an example, the Landlord was notified of a leak in the roof over that flat in November 2023. After a number of further emails, a formal complaint was issued in May 2024. The Landlord’s agent, through Chloe Heffer, considered the cause to be a faulty soil stack and on 22 May 2024 she stated that in her opinion the soil stack replacement is not a cost the leaseholders should bear. She went on to say that she had been pressing the freeholder to rectify.
31. Several flats have ongoing leaks in the roof and there are leaks into communal areas.
32. Blocked drains. There are blocked drains within the site. The drains have overflowed this year and in one case sewage came into a flat. A contractor on site said that the drains are congested with builders’ rubble. South West Water have declined to accept responsibility for drains within the site. The Landlord commissioned a drainage report, for which the leaseholders were charged, but the results were never disclosed to them.
33. Broken lights and loose cabling. The Tribunal was shown loose light fittings in the common parts with whole light units dangling from the ceiling by the attached wires. This had been reported to the Landlord’s agent but not resolved.
34. Defective fire precautions. Fire doors in the common parts are in poor condition and do not comply with fire regulations. The Tribunal was shown doors that had clear gaps around frames intended to be sealed on closure and a door which caught the floor and could not be closed. One repaired door had a metal plate fitted creating an inadequate finish. The Landlord has not rectified the issues despite formal complaints.
35. The leaseholders had had all internal doors inspected and approved and had assumed that other doors had been examined.
36. In June 2024 the managing agents agreed that upgrading works to communal doors were urgent but they remain in poor condition. On 6 June the agent stated in an email fire regulations have changed since the building was constructed.
37. The front door entry system requires repair and the main entrance door to the block cannot be secured. This has been the case for several years and has been brought to the attention of the Landlord’s agents.
38. Rubbish and debris have accumulated outside and had only been cleared when the Tribunal proceedings progressed. This had been reported to both the Landlord and managing agents. On 9 May 2024 the agents had written saying the cost of clearing rubbish will not be “service chargeable”.

39. Despite this, in the Service Charge budget certificate for the period 24 June 2024 to 23 June 2025, the sum of £500 had been allocated for bulk Rubbish Removal.
40. Redecoration of the building has not been carried out since the renovation. This despite the lease requirement to redecorate every four years and the ongoing collection of a reserve fund for such works.
41. The Applicants allege mismanagement of accounts and misappropriation of funds.
42. The Landlord has not complied with their obligations under Schedule 5 of the lease regarding accounting for costs and service charges.
43. The Applicants state that a debt in relation to gas charges has not been represented in accounts and that debt has risen from £70,000 in April 2024 to c. £91,300 at the time of the hearing. The lead Applicant states that on purchase of her flat in October 2022 there were no arrears shown in the accounts.
44. The managing agents indicate that the matter had been referred unsuccessfully to the energy ombudsman but there remains uncertainty over the whereabouts of monies paid by Leaseholders and how the debt arose so suddenly.
45. A considerable amount of work has been carried out by the Applicants in trying to establish the facts, but the situation is far from clear. For example, the actual bill for gas refers to a different address to that of Jace Court although the MSN meter number is the correct one.
46. The Applicants also state that the Respondent has failed to respond to a notice served under Section 22 of the Landlord Tenant Act 1985, requiring provision of information, having previously failed to provide the necessary information on other occasions.
47. The Applicants have duly paid the requested service charges and there should be a significant amount of money available for unpaid gas charges. They do not dispute that gas must be paid for but question where the monies they have paid have gone. It appears that this has not been paid to suppliers. A similar situation arises regarding electricity supplied through British Gas.
48. The Applicants are concerned that the original managing agents appointed by the Landlord, Fountayne Managing Ltd, were facing a wind-up petition initiated by HMRC and question whether their service charge payments are at risk. The current managing agent is Fountayne Group Ltd which the Applicants believe is a rebranding of the original management.

The Respondent's case

49. The Respondent did not respond to the Section 22 notice, the Application or comply with the Tribunal Directions. The Tribunal has experienced

difficulty in dispensing with this case in a timely manner as a result of the Respondents lack of compliance.

50. On 10 October 2024 Regional Judge Whitney issued directions ordering the submission of evidence. Those directions stated that “if the Respondent fails to comply, they will be barred from relying upon any evidence at the final hearing of this matter.”
51. The Respondent did not comply and on 5 November 2024, the Tribunal notified the Respondent that as it appeared the Respondent had failed to comply with directions, they were barred from adducing any evidence at the final hearing.

The Proposed Manager

52. In the Directions of 15 August 2024, the Tribunal directed that the Proposed Manager be provided with a copy of the Tribunal Practice Statement and Draft Order relating to the Appointment of Managers and that the Proposed Manager must attend the final hearing. The Proposed Manager was also required to confirm that he agrees to be nominated, and address matters contained in the Practice Statement and submit a draft management plan.
53. The Proposed Manager, Mr Paul Kearton supplied a written statement dated 5 September 2024. In it he stated that he is a director of Silverkey Property Management Limited and is a member of The Property Institute.
54. He has managed leasehold properties for eight years and had taken over management of challenging apartment blocks including dealing with the remediation of serious fire safety issues.
55. He set out his client money protection, liability and indemnity insurances, ICO registration and membership of the Property Redress Scheme.
56. His company are not RICS members but he stated that they run a very compliant business and uphold the Service Charge Residential Code as a matter of standard business practice. They operate a complaints procedure and use cloud based management software.
57. His company have already opened two fully compliant and ring fenced bank accounts for Jace Court.
58. The proposed charges were detailed in the statement and, including VAT, total £11,700 per annum base charges with additional charges for Section 20 consultation works and call outs.
59. The management plan would consider compliance matters first, including fire risk issues.
60. There would be monthly inspections focussing on fire precautions as well as general cleanliness.

61. The statement goes on to detail arrears and communication processes.
62. Mr Kearton confirms that neither he nor any of his staff have previous experience of a Tribunal case under section 24 [Appointment of Manager].
63. At the hearing, Mr Kearton said that he had met the Freeholder, Mr Patel and his father. He had explained his concerns to them with particular regard to the fire precautions.
64. During questioning by the Tribunal Mr Kearton said that he had run a letting agency from 2014 as an LLP but then incorporated into the company in 2022 dealing with leasehold management. Prior to this he had been a printer and a psychologist. The company was growing slowly and Silverkey now manage 30 blocks in Cornwall.
65. He works with a team of contractors including a Chartered Surveyor based in Penryn.
66. He said that compliance was a priority and that Silverkey was the most compliant managing agent in Cornwall.
67. The management plan would address fire risk issues and there would be a plan to spread the funding shortfall.
68. Regarding qualifications Mr Kearton confirmed that he was simply a member of the Property Institute and was not regulated. He was not a member of IRPM or ARMA.
69. Questioned about his knowledge of the RICS Management Code he said that he was aware of it but had not read it in detail. He said that he was not legally obliged to do so.
70. Addressing the current management issues, he considered that the arrears and debts with the gas account were matters for the Freeholder although he would be prepared to communicate with the gas supplier.
71. He would start fresh accounts for management going forward. He estimated around £20,000-£25,000 could be spent on remedial works to fire doors and the cost would need to be spread.
72. Mr Kearton said that he would not need pump priming of additional funding if existing funds were transferred and thought that c.£10,000 should be sufficient.
73. It was confirmed that the freeholder Mr Patel had agreed that Silverkey could be his manager but that nothing had happened since that statement.
74. He confirmed that he had no conflict of interest in accepting the role of Tribunal Appointed Manager.

75. Miss Ford and Mr Kearton requested that an appointment for 2 years be made.

Discussion and determination

76. The Applicants, by way of an application to the Tribunal under section 24 of the Landlord and Tenant Act 1987 (“the 1987 Act”) seek the appointment by the Tribunal of Mr Paul Kearton as Manager of the building, Jace Court. The Applicants have served a valid preliminary notice on the Landlord under section 22 of the 1987 Act.
77. Section 24(2) of the 1987 Act provides, so far as relevant to the present case, that the Tribunal may make an order where it is satisfied that: -
- (1) the Landlord 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 and that it is just and convenient to make the order in all the circumstances of the case (s.24(2)(a) (i) and (iii)).
 - (2) that the Landlord 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 that it is just and convenient to make the order in all the circumstances of the case (s.24(2)(ac)(i) and (ii));
 - (3) other circumstances exist which make it just and convenient for the order to be made (s.24(2)(b)).
78. The Applicants find themselves in a very difficult position, both in terms of the actual management of the building and the financial uncertainty around bills and payments.
79. The case they have made is compelling, detailing as it does the shortfalls in basic good management practice, the condition of the property and the lack of response from the Landlord.
80. The large gas bill arrears and apparent loss of funds already paid is a significant concern.
81. Failure to ensure compliant Fire Regulations is a very serious matter and ongoing risk.
82. The seriousness of the general lack of maintenance must not be underestimated. Signs of leaking roofs point to the need for urgent attention and provision for potentially expensive repairs.
83. The summarised position described above does not expand on the full extent of the problems caused by poor management at Jace Court.
84. The Respondents have had ample opportunity to engage with the Applicants and comply with Tribunal directions yet chose not to do so. In the absence of contrary evidence by the Respondents the Tribunal accepts the uncontroverted evidence of the Applicants.

85. The Tribunal accordingly makes the following findings that there has been, on the part of the Respondent: -
- Failure to comply with the Landlords obligations under the lease and to manage the property to an acceptable standard.
 - Failure to maintain basic fire precautions with associated risk to residents.
 - Inaction on significant other matters such as roof leakages and security of common parts.
 - Ongoing and unresolved financial irregularities both in accounting and in dealings with gas and electricity bills.
 - Failure to engage with leaseholders.
 - Failure to engage with the Tribunal and comply with directions.
 - Failure to comply with a notice under Section 22 of the Landlord and Tenant Act 1985.
86. The Applicants have produced ample, convincing and uncontested evidence that the Landlord Company has not managed the Building in accordance with the terms of the Lease as underlined in the Tribunals findings of fact above.
87. As a result, the Tribunal is satisfied that the circumstances are as outlined by the Applicants in their Application and in these circumstances have made out grounds, under section 24(2)(a)(i), (ac) and (b) of the 1987 Act for the appointment of a manager of the Building.

The Proposed Manager

88. The Tribunal has considered in detail the statement by Mr Kearton and his replies to questions at the hearing. It is clear that his aim would be to provide a high standard of management at the property. However, the role of a Tribunal appointed manager is very different to that of a typical property manager. Whilst Mr Kearton stated that he understood that an appointed manager would stand in place of the freeholder, there were issues of difference between the roles he had not addressed in his submissions.
89. Mr Kearton's written statement says that his firm upholds the Service Charge Residential Management Code as a matter of standard practice. His reply that he has not fully read the RICS Code is at odds with this. The Code stands at the heart of an appointed managers duties and detailed knowledge and experience in adopting it in practice is essential. The Code contains detailed guidance for managers which is critical in achieving best practice. Mr Kearton's practice may aim to comply with legislation but this shortfall in RICS Code knowledge is important when considering the appointment of a manager as an officer of the court.
90. Tribunal Appointed Managers usually possess membership of a professional body at a level of seniority commensurate with the

responsibilities of that manager. The appointment is personal to the manager and not the firm. The absence of such a qualification with an associated level of regulation, and the limited period of Mr Kearton's experience as a property manager weigh against a decision to appoint him.

91. Mr Kearton's management plan focusses on the fire compliance issues but does not go on to address other issues noted by the Tribunal on inspection and on hearing evidence. The fact that the roof appears to be leaking in a number of places in such a high building could represent a major item of repair and expenditure in the near future. The security of common parts is compromised. These and other issues raised by the Applicants should form part of any management plan prepared by an appointed manager.
92. The serious dispute over gas charges is at the forefront of the Applicants concerns and should be addressed in any management plan. The statement that this is a matter for the Freeholder should be backed by a plan of action if this cannot be agreed.
93. In the circumstances, the Tribunal declines to appoint Mr Kearton as manager for the reasons set out. This is regrettable because the matter is urgent, and the Applicants have made a compelling case for the need of a Tribunal appointed manager.
94. The decision not to appoint Mr Kearton makes no observation on his skills as a privately appointed property managing agent and centres on the requirements of the Tribunal for this specific role.
95. The parties are said to be in discussion and may decide to agree on another approach to management or the Applicants may reapply for a Tribunal Appointment. They may also consider other avenues to resolve the matter upon taking advice. Accordingly, the Tribunal grants the Applicants 8 weeks from the receipt of this decision in which to propose another Tribunal Appointed Manager after which time the case will be closed.

The Section 20C and Paragraph 5A applications

96. The Applicant having been successful in respect of both Applications the Tribunal determines that an Order be made under section 20C of the Landlord and Tenant Act 1985, and para 5A to schedule 11 of the Commonhold and Leasehold Reform Act 2002 preventing the Landlord from recovering under the Lease any costs incurred in connection with these proceedings by way of any future service charge or administration charge demand. This order is made notwithstanding the fact that no such costs appear to have been incurred, the Landlord not having responded to the Application.

The Applicant's fees

97. For the same reasons, the Tribunal orders under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent reimburse the Applicant £330 being the fees paid by them to the Tribunal in respect of the Applications within 28 days of the date of this decision.

Right to appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.
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, that 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.

Annex: The relevant statute law

Landlord and Tenant Act 1985

Section 20C provides that

- (1) a tenant may make an application for an order that all or any of the costs incurred or to be incurred by the Landlord in connection with proceedings before the First-tier Tribunal are not to be regarded as relevant costs to be taken into account when determining the amount of service charge payable by the tenant or any other person or persons specified in the application.

.....

- (4) the tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Landlord and Tenant Act 1987

21 Tenant's right to apply to [tribunal] for appointment of manager.

- (1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to the appropriate tribunal for an order under section 24 appointing a manager to act in relation to those premises.
- (2) Subject to subsection (3), this Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.
- (3) This Part does not apply to any such premises at a time when—
 - (a) the interest of the Landlord in the premises is held by
 - (i) an exempt Landlord or a resident Landlord, or
 - (ii) the Welsh Ministers in their new towns residuary capacity, or
 - (b) the premises are included within the functional land of any charity.
- (3A) But this Part is not prevented from applying to any premises because the interest of the Landlord in the premises is held by a resident Landlord if at least one-half of the flats contained in the premises are held on long leases which are not tenancies to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) applies.
- (4) An application for an order under section 24 may be made—
 - (a) jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section, and
 - (b) in respect of two or more premises to which this Part applies;and, in relation to any such joint application as is mentioned in paragraph (a), references in this Part to a single tenant shall be construed accordingly.

- (5) Where the tenancy of a flat contained in any such premises is held by joint tenants, an application for an order under section 24 in respect of those premises may be made by any one or more of those tenants.
- (6) An application to the court for it to exercise in relation to any premises any jurisdiction to appoint a receiver or manager shall not be made by a tenant (in his capacity as such) in any circumstances in which an application could be made by him for an order under section 24 appointing a manager to act in relation to those premises.
- (7) References in this Part to a tenant do not include references to a tenant under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.
- (8) For the purposes of this Part, “appropriate tribunal” means—
- (a) in relation to premises in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
 - (b) in relation to premises in Wales, a leasehold valuation tribunal.

22 Preliminary notice by tenant.

- (1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on—
- (i) the Landlord, and
 - (ii) any person (other than the Landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.
- (2) A notice under this section must—
- (a) specify the tenant’s name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which any person on whom the notice is served may serve notices, including notices in proceedings, on him in connection with this Part;
 - (b) state that the tenant intends to make an application for an order under section 24 to be made by the appropriate tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with;
 - (c) specify the grounds on which the tribunal would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;
 - (d) where those matters are capable of being remedied by any person on whom the notice is served, require him, within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and
 - (e) contain such information (if any) as the Secretary of State may by regulations prescribe.
- (3) The appropriate tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the

person, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

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

23 Application to court for appointment of manager.

- (1) No application for an order under section 24 shall be made to the appropriate tribunal unless—
 - (a) in a case where a notice has been served under section 22, either—
 - (i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the person required to take steps in pursuance of that paragraph having taken them, or
 - (ii) that paragraph was not applicable in the circumstances of the case; or
 - (b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either—
 - (i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or
 - (ii) no direction was given by the tribunal when making the order.
- (2)

24 Appointment of manager by tribunal.

- (1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—
 - (a) such functions in connection with the management of the premises, or
 - (b) such functions of a receiver, or both, as the tribunal thinks fit.
- (2) The appropriate tribunal may only make an order under this section in the following circumstances, namely—
 - (a) where the tribunal is satisfied—
 - (i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
 - (ii)
 - (iii) that it is just and convenient to make the order in all the

- circumstances of the case;
 - (ab) where the tribunal is satisfied—
 - (i) that unreasonable service charges have been made, or are proposed or likely to be made, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (aba) where the tribunal is satisfied—
 - (i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (ac) where the tribunal is satisfied—
 - (i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case; or
 - (b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.
- (2ZA) In this section “relevant person” means a person—
 - (a) on whom a notice has been served under section 22, or
 - (b) been dispensed with by an order under subsection (3) of that section.
- (2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—
 - (a) if the amount is unreasonable having regard to the items for which it is payable,
 - (b) if the items for which it is payable are of an unnecessarily high standard, or
 - (c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection “service charge” means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).
- (2B) In subsection (2)(aba) “variable administration charge” has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
- (3) The premises in respect of which an order is made under this section may, if the tribunal] thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.
- (4) An order under this section may make provision with respect to—
 - (a) such matters relating to the exercise by the manager of his functions under the order, and
 - (b) such incidental or ancillary matters,

as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.
- (5) Without prejudice to the generality of subsection (4), an order under

this section may provide—

- (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
 - (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
 - (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
 - (d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.
- (6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.
- (7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—
- (a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or
 - (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).
- (8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
- (9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.
- (9A) The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—
- (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
 - (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.
- (10) An order made under this section shall not be discharged by the appropriate tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.
- (11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.