



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

<b>Case reference</b>	<b>:</b>	<b>LON/00AE/LVM/2024/0005</b>
<b>Property</b>	<b>:</b>	<b>244-258 Church Lane, London, NW9 8SL</b>
<b>Applicant</b>	<b>:</b>	<b>Criterion Estates Limited</b>
<b>Representative</b>	<b>:</b>	<b>Antonia Halker (Counsel) instructed by Martin Tolhurst Solicitors</b>
<b>Respondents</b>	<b>:</b>	<b>Liana Wiltshire (244a Church Lane) Hitesh Chavda (254a Church Lane) Priti Joshi (256a Church Lane) Atul Mehta (258a Church Lane)</b>
<b>Interested Parties</b>	<b>:</b>	<b>Lee Murphy (244 Church Lane) Kultip Singh Gill (248 Church Lane) Ilhan Arslan (252 Church Lane) Surriya j Rahman &amp; Noushin Rahman- Blake (254 Church Lane) Ratnam Sugunanandarajan (256 Church Lane) Atul Mehta (258 Church Lane)</b>
<b>Manager</b>	<b>:</b>	<b>Kultip Singh Gill</b>
<b>Representative</b>	<b>:</b>	<b>Glen Samuel (Counsel) instructed by DKLM Solicitors</b>
<b>Type of application</b>	<b>:</b>	<b>Variation of Order for appointment of manager</b>
<b>Tribunal members</b>	<b>:</b>	<b>Judge Robert Latham Stephen Mason FRICS</b>
<b>Date and Venue of Hearing</b>	<b>:</b>	<b>17 February 2025 at 10 Alfred Place, London WC1E 7LR</b>
<b>Date of decision</b>	<b>:</b>	<b>26 March 2025</b>

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**DECISION**

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## **Decisions of the Tribunal**

(i) The Tribunal dismisses this application to discharge or vary the Management Order made by this Tribunal on 8 September 2022.

(ii) The Tribunal approves the commercial leases granted by the Manager in respect of 250 and 252 Church Lane. The Tribunal directs the Manager to vary the lease in respect of 250 Church Lane to record that the landlord is “Criterion Estates Limited, acting by Kultip Singh Gell, Tribunal appointed Manager” (see [52] – [60] below).

## **The Application**

1. On 7 March 2024, the Applicant landlord applied to discharge or vary a Management Order made by this Tribunal on 8 September 2022:

(i) It applies to discharge the Management Order to allow the landlord to appoint Richard Milliken (or some other qualified agent) to manage the Property upon the Management Order being discharged.

(ii) In the alternative, it seeks an order to vary the terms of the Order so that the Manager, Mr Kultip Singh Gill, is not empowered to enter any agreement or collect monies on behalf of the Landlord. It is suggested that the current arrangement is unclear and is prejudicial to the landlord and is causing her loss.

2. The application relates to 244-258 Church Lane, London, NW9 8SL. This is a parade of eight residential flats (Nos. 244a-258a) above eight commercial units (Nos.244-258) (“the Property”). The Property is located in Kingsbury and was constructed in the 1950s. It has three storeys. The residential flats occupy the two upper floors, access to which is via the rear of the parade.

3. On 23 May 2024, Judge Hawkes gave preliminary Directions. The Applicant was directed to send a copy of the application and the Directions to the respondents and the interested parties. The respondents are the eight residential tenants; the interested parties are the eight commercial tenants and the Manager. The following responded objecting to the application:

(i) Mr Gill who is both the Manager and the commercial tenant of 248 Church Lane (at p.47-66 of the Application Bundle);

(ii) Four of the residential tenants, namely Liana Wiltshire (244a Church Lane); Hitesh Chavda (254a Church Lane); Priti Joshi (256a Church Lane) and Atul Mehta (258a Church Lane); and

(iii) Six of the commercial tenants, namely Lee Murphy (244 Church Lane); Kultip Singh Gill (248 Church Lane); Ilhan Arslan (252 Church Lane); Surriya J Rahman & Noushin Rahman-Blake (254 Church Lane); Ratnam Sugunanandarajan; and Atul Mehta (256 Church Lane); and Atul Mehta (258 Church Lane).

The Grounds of Objection of the four residential and six commercial tenants are at p.67-83.

4. On 8 August 2024, Judge Nicol gave further Directions at a Case Management Conference. The Judge noted that Mrs Alexandra Jones, a director of the Applicant company, had clearly taken against Mr Gill. However, on the current information, this seemed to be based on her failure to understand that the Applicant was not permitted to manage the Property during his appointment. She had responded to an adverse possession claim and granted a licence without reference to Mr Gill, despite the management order granting power over such matters to the Manager.
5. The Judge encouraged the parties to put their troubled history behind them and to try to find a mutually acceptable way forward. He noted that they are in a continuing relationship and it was in everyone's interests that this relationship works. The Tribunal's mediation service was available if the parties wished to use it. The Respondents were invited to send the Applicant details of two or three persons who would be acceptable to them as a nominee to replace Mr Gill.
6. Pursuant to the Directions:
  - (i) The Applicant has provided two witness statements from Mrs Alexandra Jones and a Management Plan prepared by Hilbery Chaplin, the managing agents whom the Applicant would wish to appoint to manage the Property.
  - (ii) Mr Gill provided a witness statement and a survey report on the state of the roofing from Larter Smith.
  - (iii) The Applicant has provided a hearing bundle which extends to 706 pages.

### **The Hearing**

7. The Applicant was represented by Ms Antonia Halker, Counsel, instructed by Tolhurst LLP ("Tolhurst"). She was accompanied by Mr Adam Waters from her instructing solicitor. Mrs Jones joined the meeting remotely as her immunity is compromised and she is unable to leave her home. She gave evidence and was cross-examined. Mr

Richard Milliken MRICG, from Hilbery Chaplin also gave evidence. However, the Respondents had few questions for him.

8. Mr Glen Samuel (Counsel) appeared for Mr Gill, instructed by DKLM Solicitors (“DKLM”). He was accompanied by Mr Ganesh Khatri and Ms Mian from his instructing solicitor. Mr Gill gave evidence and was cross-examined. He had a dual role as both Manager appointed by the Tribunal, and as the commercial tenant of 248 Church Lane. He is an accountant. His position was that he would be happy to be replaced as Manager, if an alternative candidate was put forward who was acceptable to the tenants. No such candidate has been identified.
9. Ms Liana Wiltshire, the residential tenant of 244a Church Lane attended. She is a party to the letter opposing the application (at p.67-83). She had not made a witness statement, but we heard evidence from her. She has held her lease since 2004. She was happy with the manner in which Mr Gill was managing the Property. She worked with him and considered that the building was now being managed more effectively.
10. Mr Lee Murphy, the commercial tenant of 244 Church Lane, also attended. He is also a party to the letter opposing the application. As a commercial tenant, he is an interested party. However, the Tribunal should have regard to the views of all the tenants who are affected by the management order. He is a hairdresser. In 1991, he started working at the building as an employee. In 2020, he acquired the lease. He was satisfied with the manner in which the Property was now being managed. Mr Gill had sorted out the finances.
11. Mr Hitesh Chavda, who had been the tenant of 254a Church Lane, did not attend. He has taken the initiative in much of the litigation involving the Property and had assumed the role of representing the residential and commercial tenants. However, he has now sold his flat and is no longer an active respondent.
12. Both Counsel provided Skeleton Arguments. Mr Samuel provided a bundle of authorities. The Tribunal is grateful for the assistance that both Counsel provided.

### **The Issues to be Determined**

13. The Applicant applies for the management order to be discharged, so that it can appoint Hilbery Chaplin to manage the Property. The Respondents oppose this on a number of grounds. First, they are content with the manner in which the Property is now being managed and wish Mr Gill’s appointment to continue. Secondly, they have no confidence in the management of the Property being returned to the Applicant, given its abject failure to manage it over the past 20 years. Thirdly, the tenants would not be happy for Hilbery Chaplin to manage

the Property. This firm manage a number of properties on behalf of the Applicant. The tenants do not believe that a firm of managing agents under the control of the Applicant would manage the Property in the best interests of the tenants. Fourthly, Hilbery Chaplin are not local and manage no other properties in Brent. Indeed, when questioned by the Tribunal, Mr Milliken was uncertain as to which borough the Property was situated. The tenants were also concerned about the costs that Hilbery Chaplin would charge.

14. The Applicant is not seeking to have Mr Milliken appointed as a Tribunal appointed manager in place of Mr Gill. Judge Nicol had alerted the parties to the contents of the Appointment of Manager Practice Statement, issued in December 2021 and amended in July 2023. Mr Milliken has not managed any other property on behalf of the Tribunal. He has not provided a management plan addressing the issues raised in the Practice Statement. Neither has the Applicant produced a draft Management Order.
15. Judge Nicol had urged the parties to look to the future and seek to identify a managing agent who would be acceptable to all the parties. He invited the Respondents to propose two or three persons who might be acceptable as nominees to replace Mr Gill as Manager. The Respondents did not do this. However, on 24 July 2024, DKLM sent the Applicant a list of 56 RICS surveyors/managing agents in the NW9 area (p.690-697). On 29 July (p.366), Tolhurst responded stating that none of these firms offered this service and that the closest firm that the Applicant could find was Hilbery Chaplin. This evidence is contradicted by DKLM who contacted a number of potential firms who indicated that they would be open to managing the Property (p.698). The Tribunal is satisfied that the parties could, if they had so wished, found suitable candidates based closer to the Property.
16. The Tribunal is also required to determine the second limb to the application, namely to vary the terms of the Order so that the Manager, is not empowered to enter any agreement or collect monies on behalf of the Landlord. It is suggested that the current arrangement is unclear. However, this element of the Management Order is now of less importance given that the two commercial unit are now let.
17. The Applicant suggests that the commercial leases granted by the Manager in respect of 250 and 252 Church Lane may be void in that he had no authority under the Management Order to grant them. The parties ask the Tribunal to address this issue.

### **The Law**

18. An application to discharge the appointment of a manager takes effect as a variation of the current order. Section 24(9) of the 1987 Act provides that the tribunal may, on the application of any person

interested, vary or discharge (whether conditionally or unconditionally) an order made under section 24.

19. Section 24(9A) provides:

“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.”

20. The Court of Appeal considered the Tribunal’s discretion afforded by section 24(9) in *Orchard Court Residents’ Association v St Anthony’s Homes Ltd* [2023] EWCA Civ 1049; [2003] 2 EGLR 28, where the Tribunal had extended a management order and the landlord had appealed that decision. Keane LJ stated:

“11. It is to be noted that the legislature has not thought it fit to embody in section 24(9) the various criteria set out in section 24(2). There is a clear contrast between the requirements when an order is made and when an order is varied. It seems to me that the section is drawing a distinction between making an order and varying an order. Although it might perhaps be said that, in some circumstances, the court is always making an order when it varies an existing order, that cannot be the correct interpretation in the context of this statutory provision.

12. There are no explicit criteria in section 24(9) in contrast to section 24(2). Moreover, if an application is made by a relevant person (such as a landlord) to vary or discharge an existing order, the legislature has expressly required the tribunal to be satisfied of certain matters: see section 24(9A). The inclusion of those express requirements in subsection (9A) and the omission of anything of that sort in subsection (9) itself has to be seen as deliberate, and it confirms the contrast between section 24(2) and section 24(9).

13. Sections 24(2) and 24(9) deal with quite different situations. Section 24(2) is concerned with making an order where one does not exist, whereas section 24(9) is dealing with an order that is already in existence because the tribunal has already been satisfied that the tests in section 24(2) have been met.

14. I quite accept that, in exercising its discretion under section 24(9), a tribunal must have regard to relevant considerations: that is trite law

.... But when one looks at paras 20 and 21 of the tribunal's decision, it is quite clear that this tribunal did have such regard. However, section 24(2) did not require it to be satisfied that at least one of those thresholds had been passed. Nor can I see any reason why this particular type of variation, the extension of a manager's term, should have to meet the criteria in section 24(2). Mr Heather has conceded that there is no limit on the length of time for which a manager may be appointed in the first place. In those circumstances, why should one require the section 24(2) tests to be met all over again."

21. Mr Samuel referred us to [47] of the decision of *Orchard v Mooney & Orkin* [2023] UKUT 78 (LC), in which the FTT had concluded:

"In view of the recent history and the lack of cooperation between the leaseholders the FTT described the Orchards' suggestion that management should revert to the freeholder 13 which they jointly controlled as "preposterous". It considered that the manager could only be discharged if the Orchards were able to show that she was "performing her duties so badly that even their proposed alternative is better". Its assessment was that the manager "is not clearly wrong and is doing her best in circumstances which are challenging". No grounds had been made out for the discharge of her appointment."

22. Martin Rodger KC, the Deputy Chamber President, considered that the FTT had applied an appropriate test of the exceptional facts of this case. He concluded at [79]:

"We are satisfied that any tribunal which addresses such an application by asking whether it is just and convenient to vary or discharge an existing order will not misdirect itself".

23. We remind ourselves that Part II of the 1987 Act is a "problem solving jurisdiction" (see *Chuan-Hui v K Group Holdings Inc* [2021] EWCA Civ 403; [2021] 1 WLR 5981 per Henderson LJ at [29]). In *Kol v Bowring* [2015] UKUT 530 (LC), HHJ Gerald noted at [22] that the purpose of appointing a manager is to:

"...enable that property to be managed subject to the control of the tribunal in circumstances where the landlords' management or discharge of its obligations under the provisions of the lease have been found wanting. Looking at matters very broadly, the whole purpose of the jurisdiction is to enable the F-TT to ensure that what has hitherto been done inadequately and perhaps improperly is done adequately and properly".

## **The Background**

24. The majority of the leases for the residential and commercial properties were granted in 1993. The Tribunal has been provided with the leases for 246A Church Lane (p.397-422) and 246 Church Lane (p.424-447). The leases for the residential and commercial tenants are in similar terms and are granted for terms of 99 years. The leases are not entirely consistent with regard to the service charge contributions. It has been agreed that the residential units pay 5% and the commercial units 7.5%. On 6 June 1997 (p.480), the Applicant granted Mr Gill acquired a 99 year leasehold interest in 248 Church Lane.
25. On 30 August 1995 (p.123), the Applicant company acquired the freehold. The company is owned by the Guest family. Mrs Jones described how the company had been established by her grandfather. It manages some 100 properties. Her father, Mr Ashley Guest, had been in sole autonomous control of the company. Although she had become a director in March 2010, she was not privy to anything other than the two properties which had been assigned to her. Until her father's death on 24 November 2020, she had had no knowledge of the company's portfolio. He had been ill for six months prior to his death. Mrs Jones accepted that the Applicant had failed to properly manage the Property. It is apparent that Mrs Jones only took an interest in the Property in June 2023 when Mr Arslan made an application to the Land Registry to be registered as owner of 252 Church Lane asserting that he had been in adverse possession since April 2002 (see p.28-44).
26. The Property first came before this Tribunal on 20 February 2006 when the eight residential tenants brought an application pursuant to section 27A of the Landlord and Tenant Act 1985. The tenants included two of the current Respondents, namely Mr Chavda (254a Church Lane) and Mr and Mrs Mehta (258a Church Lane). The Applicant did not engage with the proceedings. The decision of the Tribunal, dated 17 March 2006, is at p.482-489. The application had been brought because there had been a complete disregard by the landlord of its obligations under the leases. Some of the lessees were having difficulty in selling their flats. The tenants were also having difficulty in processing insurance claims in respect of repairs and maintenance of the Property.
27. On 24 January 2007, the Tribunal appointed Mr Paul Cleaver of Urang Limited as Manager for a period of two years. The appointment lapsed, but Mr Cleaver continued to manage the Property on a contractual basis. It seems that no one had realised that the appointment had lapsed.
28. On 15 March 2011, the residential tenants made a further application for the appointment of a Manager. The basis of the Application was that the Applicant was failing to discharge its duties as landlord. At a



hearing on 18 July 2011, it was apparent that the tenants had lost confidence in Mr Cleaver. Mr Gill stated that the reason for this was that Mr Cleaver had failed to put the Property in a proper state of repair. There was a shortfall in the service charge accounts as the Applicant was not paying the service charge in respect of the two commercial units for which it was responsible; one was squatted, the other was empty. There was a further hearing on 9 November 2021. Three of the residential tenants and four of the commercial tenants supported the application. Mr Chavda took the initiative on behalf of the tenants. Ms Wiltshire and Mr Gill were amongst the tenants who attended. The Applicant took no part in the proceedings. The decision of the Tribunal, dated 30 November 2011, is at p.490-494. The Tribunal appointed Mr Christopher Hill as manager for a term of two years from 1 December 2011. His appointment was subsequently extended on at least two occasions.

29. On 11 August 2020, the tenants made a further application for Mr Hills' appointment to be extended. The application was made by Mr Chavda, Ms Wiltshire and Mr Joshi, all of whom are Respondents to the current application. The application was supported by five of the commercial tenants, including Mr Gill. The decision of the Tribunal, dated 28 October 2021, is at p.495-502; the Management Order at p.503-511. The Applicant did not engage with the application. The Tribunal recorded that the Applicant had not engaged in any management of the Property for ten years. There were arrears arising from the two vacant commercial units, whose total contribution was 15%. Mr Hills' appointment was extended until 25 March 2027. He was authorised to collect 15% of the service charge expenditure from the Applicant in respect of the two vacant commercial units.
30. On 18 April 2022, Mr Chavda applied to vary the Management Order to replace Mr Gill as Manager in place of Mr Hills. Mr Hills had sold his business and no longer wished to remain as Manager. The application was supported by four of the residential tenants and six of the commercial tenants. All these tenants are Respondents to the current application. The Applicant did not participate in the proceedings. Such was its lack of interest in the Property that Mr Arslan had not paid any rent for twenty years and one commercial unit had remained empty for many years. There were arrears of service charges of £19,000 of which £10,000 were due from the Applicant. The empty commercial unit had caused a number of problems. First, this was affecting the insurance. Secondly, it was run down and had been the subject of fly tipping and drug abuse activities. Thirdly, the lack of upkeep had impacted on the drains. This had resulted in the tenants having to organise cleaning of the rear area and to clear the drains.
31. In its decision, dated 8 September 2022 (at p.513-515), the Tribunal appointed Mr Gill as Manager for the period 12 September 2021 to 25 March 2027. It is unusual for the Tribunal to appoint an accountant as a manager who is also a commercial tenant of the property. However,

the Tribunal had been told that he had extensive experience in dealing with the management of the Property as a tenant and accountant. Further he was director and shareholder of a similar development in Sudbury, which he had fully managed since 2001. He was willing to take on the role and confirmed that he would comply with the RICS Code of Practice concerning the management of properties.

32. The Tribunal was concerned that 250 Church Lane had been empty for many years and about the uncertain status of Mr Arslan at 252 Church Lane. To ensure adequate management of the Property, Clause 6 of the Management Order empowers the Manager to:

“(a) collect monies from the Landlord as a contribution towards the shortfall of the service charges. Such contribution will equate to 7.5% for each of the two retail units retained by the Landlord.

(b) subject to legal advice, the Manager has authority to seek to let the retail property at 250 Church Lane until the end of this Order on terms similar the existing retail units or such other terms as may be allowed/agreed.

(c) again, subject to legal advice to regularise the letting of the retail premises at 252 Church Lane, currently occupied by Mr Ilhan Arslan and if necessary to grant a lease on similar terms as the existing retail units or such other terms as may be allowed/agreed.

(d) demand and recover service charges attributable to both the residential flats and the commercial premises including those in the ownership of the Respondent.

(e) receive the rents payable in respect of the flats and the commercial premises and to hold same to the credit of the Respondent but to be first off set against any liability that the Respondent may have with regard to arrears of payments due under the leases at the property and the terms of the management Order. Any balance will be accounted for by the Manager at each year end.”

33. The Tribunal highlights the following provisions in the Management Order:

“8. From the date this Order comes into effect, no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.

9. The Manager must act fairly and impartially in the performance of his/her functions under this Order and with the skill, care and diligence to be reasonably expected of a Manager experienced in carrying out work of a similar scope and complexity to that required for the

performance of the said functions. The Manager's overriding duty to this Tribunal.

10. Where there is a conflict between the provisions of the Management Order and the Leases, the provisions of the Management Order take precedence.

....

23. The Manager shall collect all rents payable under the residential and or commercial Leases. The sums so recovered shall be held for the Respondent upon terms that the funds are first used to reduce any arrears owed by the Respondent in respect of the two premises it has retained at 250 and 252 Church Lane and for future contributions and thereafter shall be paid to the Respondent at the end of each accounting year.

34. Upon the making of the Management Order, Mr Gill instructed bailiffs to enter 250 Church Lane and change the locks. He instructed Hilton & Fox to market the unit. On 29 November 2022 (p.554), he agreed Heads of Terms with Serene Array Funeral Services Limited ("SAFSL"). However, it was not until 20 December 2023 (p.197-238) that the lease was signed. It was drafted by DKLM. The lease granted a term of 25 years at a rent of £18,000 pa."
35. On 18 August 2023, the Applicant sent a locksmith to drill and change the locks. It had no right to do so. The Management Order reserved these management responsibilities to the Manager.
36. Mr Gill sought to regularise the position with Mr Arslan who had occupied 252 Church Lane since April 2002, but who had not been paying any rent. On 14 April 2023 (p.604), DKLM serve a notice pursuant to Section 25 of the Landlord and Tenant Act 1954. Following the service of the Notice, Mr Gill negotiated a new lease with Mr Arslan. On 23 November 2023 (p.155-196), the lease was signed. It was drafted by DKLM. The lease granted a term of 15 years at a rent of £18,000 pa.
37. On 5 June 2023 (p.28-44), Mr Arslan made an application to the Land Registry to be registered as the owner of 252 Church Lane, by adverse possession, asserting that he had been in occupation since 1 April 2002. This finally stirred the Applicant into action. On 11 September, Mrs Jones issued trespass proceedings against Mr Arslan in respect of 252 Church Lane. She had no right to do so. The Management Order reserved these management responsibilities to the Manager.
38. On 18 August 2023 (p.334), DKLM wrote to the Applicant on behalf of Mr Gill demanding a set of keys to 250 Church Lane and requiring it to comply with the terms of the Management Order. On 26 October 2023, Tolhurst responded on behalf of the Applicant. Complaint was made that Mr Gill had not complied with the Management Order in that he

had failed to (i) draw up a planned maintenance programme by 31 January 2023; (ii) submit a brief written report to the Tribunal by 29 September 2023 and (iii) account to the landlord for the rent.

39. On 14 November 2023, Mr Gill and Mrs Jones had a telephone conversation. Mr Gill stated that he was intending to grant leases in respect of 250 and 252 Church Lane. We are satisfied that Mrs Jones did not hear what Mr Gill had said. Her understanding was that Mr Gill would send her draft leases for the two commercial units and that “going forward, we would revert to a normal landlord/agent scenario i.e. he would consult with us and act on our instructions. We are satisfied that there was no such agreement. Mr Gill was aware of his responsibilities under the Management Order and that his primary responsibility was to this Tribunal, rather than the landlord. He was not willing to share the draft leases as he was concerned that this might interfere with the grant of the leases.
40. On 7 March 2024, the Applicant issued this application to discharge or vary the Management Order made by this Tribunal on 8 September 2022.

### **Discussion**

41. The Tribunal only appoints a manager as a last resort when it is apparent that this is just and convenient to ensure that a property is properly managed. A Manager is appointed to oversee a scheme of management and acts independently of the parties and as an officer of the Tribunal.
42. A Tribunal appointed Manager has now been managing the Property since 24 January 2007. This has been necessary because of the abject failure of the Applicant to comply with their obligations as landlord. Over a period of 18 years, the Applicant failed to engage with the applications brought by the tenants before this Tribunal. Throughout this period, both the residential and the commercial tenants have acted in unison. While some tenants may not have engaged with the proceedings, none has dissented from the approach adopted by the active tenants.
43. Although Mr Gill is an accountant and not a professional management agent, the tenants are satisfied with the manner in which he has managed the Property since 8 September 2022. Indeed, they commend him for bringing the service charge account under control, in a manner that the previous professional managers had failed to do. Leases have now been granted in respect of 250 and 252 Church Lane. Funds are now available to put the property in a proper state of repair. The tenants note (at p.68) that there have been occasions when the roofs have leaked, gutters have become loose, and drains blocked. Mr Gill has fixed these problems promptly. Mr Gill recognises that works are

required to the tiled roof and he has now obtained a report from John-Jack Dagnall, dated 22 October 2024 (at p.668-684).

44. Mrs Jones has been a director of the Applicant company since 17 March 2010. She only took an interest in the Property in June 2023 when Mr Arslan made an application to be registered as owner of 252 Church Lane by adverse possession. She states that she was unable to exercise her responsibilities as a director because of her overbearing father. Her father died on 24 November 2020. Mrs Jones states that he was ill for six months before his death. Mr Samuel noted that a director is under a legal duty to exercise independent judgement and to exercise reasonable care, skill and diligence. The Tribunal is satisfied that Mrs Jones should not have accepted the appointment as a director if she was unable to fulfil these duties because of her relationship with her father. When her father was ill, the Board had an opportunity to put proper management arrangements in place; they failed to do so. On the death of her father, Mrs Jones had responsibility for this Property. She took no action for over 2.5 years, despite two separate applications being brought before this Tribunal in connection with the appointment of Mr Hills and Mr Gill as managers.
45. In her first witness statement (at p.115), Mrs Jones states that she saw no reason to object to Mr Gill's appointment as Manager. She now realises that this was a mistake. Her complaint relates to the decision by Mr Gill to grant the leases in respect of 250 and 252 Church Lane. The Tribunal is satisfied that the Applicant has failed to understand the legal consequences of the Management Order. No rent had been demanded in respect of 252 Church Lane since 2002; 250 Church Lane had stood empty for many years. This had caused real problems for the tenants. The Applicant had allowed this situation to arise. On 8 September 2022, the Tribunal granted Mr Gill specific powers to deal with this situation. He did so. Commercial leases have been granted at commercial rents.
46. The Applicant seeks to blame Mr Gill for his failure to demand rent from Mr Arslan and for permitting 250 Church Lane to be squatted. This rather reflected the Applicant's neglect of the Property over many years.
47. Ms Halker argued that the Management Order did not permit Mr Gill to grant commercial leases for 15 and 25 years respectively. She argued that these leases could extend beyond the period of his appointment. We consider this argument below.
48. The Applicant makes a number of criticisms of the manner in which Mr Gill has managed the Property (see p.15):
  - (i) He has not prepared and submitted to the Landlord an annual statement of account detailing all monies receivable, received and

expended. Mr Gill responds (at p.48) that he prepared accounts for the year ended 31 March 2024 (“the Accounts”), being the first and only complete financial year that he has been the manager of the Property. These are at p.53-58. He had attempted to send to them at the Applicant at Finsgate, 5/7 Cranwood Street, London EC1V 9EE, but these had been returned.

(ii) He has failed to draw up a planned maintenance programme by 31 January 2023. Mr Gill responds that while he has not prepared a formal written maintenance programme, he has set out his proposed maintenance work in an email, dated 31 January 2023 (at p.60).

(iii) He has not carried out all required repair and maintenance required in the leases. Mr Gill has provided a list of the maintenance work that he has arranged (at p.62)

(iv) He has failed to consult the landlord on any planned and major works to the Property. The Tribunal notes that the Applicant had failed to engage with Mr Gill’s appointment as Manager. Their first contact was in August 2023, when the Applicant wrongly arranged for the locks to be changed at 250 Church Lane.

(v) He has failed to submit a brief written report to the Tribunal on the progress of the management of the Property by 29 September 2023. In his brief email to the Tribunal, dated 31 January 2023 (at p.60), Mr Gill provided a brief report to the Tribunal on the progress of the management of the Property.

49. In her witness statement (p.114-121), Mrs Jones makes a number of further complaints:

(i) Mr Gill is charging too much for insurance. She has obtained a quote from NFU Mutual for £5,370, whereas Mr Gill has charged £8,726.75. She suggests that the declared value of £5,417k is too high; it should be £2,462k. The loss of rent is set too high at £1.634k for 36 months, it should be £114k. Mr Gill responds that none of the tenants have complained about the cost of insurance which is £543 per unit. The levels sought were set by Mr Hills. The Tribunal notes that the Applicant suggest that the loss of rent should be set at £2,375 per unit per annum. This is wholly unrealistic given the rents charged by buy-to-let landlords. The Applicant had left the Property uninsured. None of the tenants have complained of the service charge that they have been required to pay in respect of insurance.

(ii) Mrs Jones questions whether Mr Gill has arranged the appropriate professional insurance. Mr Gill has provided an Insurance Certificate (at p.650) which confirms that he is covered.

50. It is only too apparent to the Tribunal that Mrs Jones has taken against Mr Gill. She accepts no responsibility for the Applicants manifest failure to manage the Property over some twenty years. She has not understood the effect of the Management Order. This empowers the Manager to take a number of steps which would normally be responsibility of the landlord. This has only been necessary to ensure that the Property is properly managed after years of neglect. She suggests (at [18] of her first witness statement) that nothing in the Management Order would stop Mr Gill from granting a 999 year lease to a friend for £1 per year. This is nonsense; the Manager is required to act in the best interest of the parties. Mrs Jones had no right to send contractors to secure 250 Church Lane. Mr Gill had granted a lease as permitted by the Management Order. Mrs Jones now seeks to contend that this is void and has written to the tenant to this effect.
51. In her second witness statement (at [26]), Mrs Jones suggests that now that Mr Chavda has sold his flat, Mr Gill is the only person opposing the application. Again, this is wrong. On 12 June 2024 (p.67), four residential tenants (including Mr Chavda) and six commercial tenants opposed the application. Both Ms Wiltshire and Mr Murphy, who attended the hearing, confirmed that this remained their position. No tenant has supported the application.

### **The Grant of the Commercial Leases**

52. The Tribunal accepts that there is some ambiguity in the Management Order in respect of the leases granted in respect of 250 and 252 Church Lane:
- (i) 250 Church Lane: This unit had been empty for several years and had been squatted. Clause 6(b) of the Management Order authorised the Manager “subject to legal advice .... to seek to let the retail property at 250 Church Lane until the end of this Order on terms similar the existing retail units or such other terms as may be allowed/agreed”.
- (ii) 252 Church Lane: This unit had been occupied by Mr Arslan since April 2002. He had not been paying any rent. There is no evidence as to the circumstances in which he had originally occupied this unit. Clause 6(c) of the Management Order authorised the Manager “subject to legal advice to regularise the letting of the retail premises at 252 Church Lane, currently occupied by Mr Ilhan Arslan and if necessary to grant a lease on similar terms as the existing retail units or such other terms as may be allowed/agreed”.
53. The Tribunal has been provided with the lease in respect of 246 Church Road (p.242-447). This is dated 4 May 1993. The lease is for a term of 99 years from 25 March 1993 at a premium of £50,000. The tenant is required to pay a ground rent of £50 which doubles every thirty years. The tenant is also required to pay an insurance rent and a service

charge. Mr Milliken (at p.388) has confirmed that the five other commercial units are on similar terms.

54. Mr Gill, on the advice of DKLM granted the following leases:

(i) 250 Church Lane: The lease, dated 20 December 2023, to SAFSL is granted by “Criterion Estates Limited acting by Kultip Singh Gill (as under a Management Order dated 12 September 2022)”. The lease is for a term of 25 Years at an annual rent of £18,000. There is a rent review clause. There is also provision for an insurance rent. There is no provision for the payment of a service charge. The effect of this is that the unit’s 7.5% contribution to the service charge will be met from the rent.

(ii) 252 Church Lane: The lease , dated 23 November 2023, to Mr Arslan is granted by “Kultip Singh Gill”. Mr Gill had no authority to grant a lease in his own name. He could only grant it in the name of the Applicant pursuant to his powers under the Management Order. The lease is for a term of 15 Years at an annual rent of £18,000. There is a rent review clause. There is also provision for an insurance rent. Again, there is no provision for the payment of a service charge. The effect of this is that the unit’s 7.5% contribution to the service charge will be met from the rent.

55. The Tribunal is satisfied that the intention behind the Management Order was for the Manager to let these two commercial units at commercial rents. This was necessary to generate the funds required to fund the works necessary to put the Property in a proper state of repair. Further, squatters were causing nuisance problems to the detriment of all the tenants.

56. However, it is less clear whether the Management Order contemplated that Mr Gill should grant long leases for terms of 99 years. Indeed, there is a conflict between this and the phrase “until the end of this Order” which might suggest that any lease for 250 Church Lane should not extend beyond 25 March 2027. Such a restriction would have had an adverse impact on the rent that the manager would have been able to secure.

57. In so far as the leases were not granted on “terms similar to the existing retail units”, the Management Order made provision for the terms to be “allowed/agreed”. This contemplated two possibilities: (i) the terms would be allowed (or approved) by the Tribunal; or (ii) agreed with the landlord.

58. Mr Gill did not seek the agreement of the landlord. He suggests (at p.470) that this could not have been contemplated by the order, as the Applicant had failed to engage for some 20 years. He considered that he



had authority to grant the leases as these were for terms of less than 99 years. However, the terms of these leases were quite different to those of the long leases granted to the other commercial tenants.

59. The Tribunal is satisfied that Mr Gill should have applied to the Tribunal to approve the terms of these leases before they were granted. However, it would assist neither landlord nor the tenants were this Tribunal to conclude that they were void, as suggested by Ms Halker. The Tribunal is satisfied that Mr Gill has acted in good faith and on legal advice. He has let these two commercial units at commercial rents. This Tribunal is willing to approve the grant of these leases, albeit retrospectively.
60. However, the Tribunal is satisfied that Mr Gill had no authority to grant a lease in respect of 252 Church Lane in his own name. He could only grant the lease in the name of the Applicant, acting pursuant to his powers under the Management Order. The Tribunal directs Mr Gill to amend the lease accordingly. The Tribunal is satisfied that Mr Arslan was aware of the true situation. The variation is in the interests of both parties.

### **The Tribunal's Decision**

61. The Tribunal must first consider whether to discharge the Management Order which was made on 8 September 2022. The Tribunal declines to do so for two reasons:
  - (i) The Tribunal has no confidence that the discharge of the order will not result in a recurrence of the circumstances which led to the order being made, given the Applicant's abject failure to manage the Property over a period of some 20 years.
  - (ii) The Tribunal is satisfied that it is just and convenient in all the circumstances of the case for the Management Order to continue. The tenants are satisfied with the manner in which Mr Gill is managing the Property. The Property is insured. Mr Gill has carried out repairs. The two commercial units are now let and the nuisance caused by the squatters has now been resolved. The finances have now been brought under control. This will enable Mr Gill to embark upon a more ambitious programme of planned maintenance.
62. The Applicant took an informed decision not to engage with the application when the Management Order was made on 12 September 2022. Mrs Lawrence is now seeking to relitigate the appointment. The Tribunal is not willing to permit it to do so. The Tribunal gave a reasoned decision for concluding that Mr Gill was an appropriate person to manage the Property and that he should be given exceptional powers to address the management problems that had arisen through years of neglect by the landlord. The Management Order has been a

success. It ill beholds Mrs Jones to complain of the level of the service charges when the tenants who pay the charges have no complaint. It is to the Applicant's financial advantage that 250 and 252 Church Lane are now occupied by tenants who are paying a commercial rent. Mrs Jones gives Mr Gill no credit for this. The attitude that Mrs Jones has adopted to both Mr Gill and to the Management Order made by the Tribunal has not impressed the Tribunal.

63. The Tribunal has been concerned about the circumstances in which Mr Gill granted the commercial leases in respect of 250 and 252 Church Lane. We are satisfied that these were not granted in accordance with the terms of the Management Order. However, we have regard to three important factors. First, Mr Gill acted on legal advice, as directed by the Tribunal. Secondly, he acted in good faith. Thirdly, the leases were granted on commercial terms. We have discussed the consequence of these grants above. The situation will not repeat itself in the future as all units are now let on commercial terms. In these circumstances, we do not consider that this is a ground to discharge the Management Order. We would merely highlight that should Mr Gill be uncertain of his powers, he should seek guidance from the Tribunal.
64. It would have been open to the Applicant to propose a professional manager to replace Mr Gill as the Tribunal appointed Manager. It has decided not to do so. Any such application would need to have been made in accordance with the Appointment of Manager Practice Statement (see [14] above). Had the Applicant applied to have Mr Milliken substituted as the Tribunal appointed Manager, the Tribunal would have been reluctant to do so. Mr Milliken lacks the relevant experience as a Tribunal appointed manager. Further, the Respondents have raised legitimate concerns that he would not be sufficiently independent of the Applicant and is not local.
65. Secondly, the Applicant seeks to vary the terms of the Management Order so that the Manager, Mr Kultip Singh Gill, is no longer empowered to enter any agreement or collect monies on behalf of the Landlord. It is suggested that the current arrangement is unclear and is prejudicial to the landlord and is causing her loss. Again, the Tribunal declines to do so.
66. First, the Applicant objects to the exceptional power which was granted to the Manager in respect of the grant of leases in respect of 250 and 252 Church Lane. This is now a matter of history and will not arise again in the future.
67. Secondly, the Applicant objects to the powers granted to the Manager to collect monies on behalf of the landlord. We are satisfied that this power is necessary to ensure that the Property is properly managed. Over recent years, substantial arrears have arisen. This has prevented the Tribunal appointed Managers from implementing a planned

maintenance programme. However, at the end of any financial year, the Manager must account to the Applicant for any rents received.

68. Clause 6(e) of the Management Order permits the Manager to exercise a right of set off in respect of any service charges payable by the Applicant. This right of set-off does not extend to any arrears payable by any of the tenants. The Manager must enforce such debts against the defaulting tenants.
69. The Tribunal considers two further matters. Mr Samuel suggests that the Applicant has no authority to grant lease extensions. The Management Order does not reserve this to the Manager. A lease extension is not a “disposition”. This remains the responsibility of the landlord.
70. Mr Samuel complains that the Applicant has sought to assume responsibility to grant licences to assign. Clauses 16 and 17 reserve this responsibility to the Manager.

### **Looking to the Future**

71. Judge Nicol urged the parties to seek agreement on a professional managing agent to be appointed as Manager in place of Mr Gill. This option is still open to the parties.
72. A further option would be for the residential tenants to apply for the statutory right to manage under Part 2, Chapter 1 of the Commonhold and Leasehold Reform Act 2002. On 3 March 2025, the Leasehold and Freehold Reform Act 2024 increased the non-residential proportion disqualification from 25% to 50%.
73. At the hearing, Mr Samuel indicated that Mr Gill might be minded to make an application for a penal costs order under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. However, before considering such an application, the Manager should note that the Tribunal has had significant concerns about the circumstances in which the two commercial leasers were granted. The Applicant has had legitimate concerns about these.

**Judge Robert Latham**  
**26 March 2025**

### **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).