



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

Case reference	:	MAN/30UF/LVM/2020/0001 MAN/30UF/LAM/2022/0002 MAN/00EY/LVM/2023/0003
Property	:	Lindsay Court, New Road, Lytham St Annes FY8 2SR
Applicant	:	David Bentham – Tribunal Appointed Manager
Representatives	:	Peter Sibley (Counsel) Scott Cohen Solicitors
Respondents	:	1. Lindsay Court Securities Limited 2. Various Long Leaseholders of Lindsay Court, New Road, Lytham St Annes FY8 2SR
Representatives	:	Mr Norman Blair (for the landlord) Mr Adrian Bromiley (lay representative for various of the long leaseholders) Mr Mark Habib (lay representative for various of the long leaseholders in Block 1)
Type of application	:	Landlord & Tenant Act 1987 – Section 24(9) (Variation / Discharge of Management Order)
Tribunal member(s)	:	Tribunal Judge L. F. McLean Regional Surveyor Mr N. Walsh

Date of hearing : **14th August 2024**

Hearing venue : **Video Hearing (CVP)**

Date of decision : **19th September 2024**

DECISION

Decisions of the Tribunal

- (1) Pursuant to Section 24(9) of the Landlord and Tenant Act 1987, the Tribunal makes the order in the terms set out in the attached Appendix 1, varying the terms of appointment of David Bentham as Manager in respect of the land and premises known as Lindsay Court, New Road, Lytham St Annes FY8 2SR.**
- (2) Pursuant to Section 24(9) of the Landlord and Tenant Act 1987, the Tribunal makes the order in the terms set out in the attached Appendix 2, discharging David Bentham from his appointment as Manager under the aforesaid management order, with effect from the date and subject to the conditions specified therein.**

REASONS

The applications

1. This Decision finally disposes of three related applications which have been made between 2020 and 2023 (to such extent that they are still extant) and which all relate to the statutory management of the residential development known as Lindsay Court, New Road, Lytham St Annes FY8 2SR (“the Property”). In outline, the three applications referred to are:-

Application no.	Date applied	Applicant	Respondents	Basis
MAN/30UF/LVM/2020/0001 (“2020 Application”)	21 st January 2020	David Bentham	Lindsay Court Securities Ltd; Various Leaseholders	Extend the existing order until 2023

MAN/30UF/LAM/2022/0002 ("2022 Application")	28 th February 2022	Lindsay Court Securities Limited	Various Residential Long Leaseholders (save for the Leaseholders in Block 1)	Appoint D. Norris in place of D. Bentham
MAN/00EY/LVM/2023/0003 ("2023 Application")	14 th August 2023	David Bentham	Lindsay Court Securities Ltd; Various Leaseholders	Vary existing order to update, and recognise the removal of Block 1 via RTM on 22 nd January 2021

2. These applications all relate to a management order which was initially made by the Tribunal with effect from 13th March 2014 and was renewed from 16th March 2017.
3. The 2020 Application was initially made in relatively routine fashion so as to extend Mr Bentham's existing appointment for a further three years, but became overtaken by events inasmuch as that on 31st July 2020 the Tribunal decided, in separate proceedings, that Lindsay Court (St Annes) RTM Company Limited was entitled to acquire the Right to Manage "Block 1" of the Property under the Commonhold and Leasehold Reform Act 2002 ("CLRA 2002"), and that it would acquire that right on 22nd January 2021. This also inevitably meant that Block 1 had become excluded from the scope of Mr Bentham's appointment, insofar as this related to the management of the Block itself including its "appurtenant property" as defined in CLRA 2002. Lindsay Court Securities Limited ("the Landlord") and Mr Bentham therefore further applied to vary the existing management order, effectively so as to re-appoint Mr Bentham in relation to Block 1. The Tribunal decided that it could not do that, and that decision was upheld on appeal to the Upper Tribunal in *Bentham and another v Lindsay Court (St Annes) RTM Company Limited and others* [2021] UKUT 4 (LC).
4. That being the case, the 2022 Application was prompted by a proposal to replace Mr Bentham with Mr Darren Norris, which was ultimately refused by the Tribunal by way of a decision dated 16th February 2023.
5. The 2023 Application followed on from the Tribunal's refusal to appoint a new manager in Mr Bentham's stead, which prompted him to seek a variation of the existing management order to update the fees regime and to make any adjustments needed to reflect the exercise of RTM in relation to Block 1. This soon also become overtaken by developments, when almost all of the remaining leaseholders of the Property served notice to exercise the Right to Manage ("RTM") in relation to their respective

blocks, with the exceptions of Block 1 (which had already exercised RTM) and Block 7. Under the relevant provisions of CLRA 2002, this further reduced the scope of Mr Bentham's appointment with effect from 24th April 2024, such that he was left managing only Block 7 together with those common parts or communal areas of the Property which were not subject to RTM by virtue of being considered "appurtenant property". The issue therefore arose as to whether Mr Bentham could simply be discharged from his appointment altogether.

Background

6. The Property is a purpose-built residential development of 96 residential apartments comprised within 16 blocks of 6 flats each, together with communal facilities, car parking and separate blocks of freestanding garages. It is located off Squires Gate Lane, near to the junction with New South Promenade and Clifton Drive North.
7. For reasons which have been rehearsed at length in previous decisions, there have been difficulties in conducting repairs and maintenance to the buildings at the Property. From 2008 until 2014, the whole of the Property was under the management of Lindsay Court RTM Company Limited. Due to the scale of the works needed to put the buildings and facilities into repair, and problems arising from the service charge machinery contained within the different variants of lease terms utilised for different flats, the Landlord applied to the Tribunal for the appointment of a manager under Part II of the Landlord and Tenant Act 1987 ("LTA 1987"). Mr Bentham was duly appointed with effect from 13th March 2014, which had the effect of extinguishing the RTM exercised through Lindsay Court RTM Company Limited, which was eventually dissolved on 18th November 2014. Mr Bentham's appointment was later renewed from 16th March 2017 for another three years.
8. In recent years, the relationship between Mr Bentham and the leaseholders has come under strain. As has been set out above, the present factual situation is that with effect from 24th April 2024 he has been left managing only Block 7 together with those common parts or communal areas of the Property which are not subject to RTM by virtue of being considered "appurtenant property".
9. The various RTM companies in respect of each block have collectively appointed Block Property Management Limited to act as their managing agents to assist in the day-to-day management of the individual blocks, and ultimately to ensure that long term repairs will be carried out. Mark Habib is the managing director of Block Property Management Limited and he has been working with the various leaseholders to represent their interests viz. Mr Bentham. He has assisted the Tribunal by appearing as a lay advocate. A number of the leaseholders, who have collectively organised an informal residents' group known as the "Steering Group", are represented in these proceedings by Mr Adrian Bromiley who is a retired solicitor. The Tribunal is grateful to Mr Habib and Mr Bromiley for their kind assistance in dealing with the recent applications.

10. Mr Bentham's intentions regarding the future of his appointment have necessarily evolved since early 2020. Initially he was simply seeking an extension of his tenure. When it became evident that many leaseholders were unhappy with him, he sought to be substituted by a replacement manager. The Tribunal were not persuaded that this was appropriate, at which point Mr Bentham's attention returned to updating the terms of the existing appointment. Once it became clear that much of the Property would *de facto* be managed by Block Property Management Limited, Mr Bentham again raised the prospect of being discharged from his appointment. During the course of previous case management discussions, it was mooted that Mr Habib could be a suitable replacement for him. Although this suggestion met with tentative approval from various parties, Mr Habib ultimately decided against being appointed in this manner.
11. With Mr Bentham wishing to be released, and there being no suitable replacement in view, the position which the parties finally settled on was that the statutory management of the Property should come to an end and that the management arrangements for Block 7 and the common parts / communal areas should revert back to the Landlord. It has therefore fallen to the Tribunal to decide whether this is the right course of action and, if so, what transitional arrangements need to be made.

Grounds of the application

12. By the time of the final hearing, the Applicant's grounds of the application were, in summary, that:-
 - a. The terms of the existing management order should be varied so as to make updated provision for the payment of the manager's fees and allowance for the various blocks of the Property having become excluded from the scope of the management order over time by virtue of RTM;
 - b. The existing management order should be discharged altogether as it was more appropriate for the leaseholders (through the RTM companies and their appointed agents) to manage the Property in concert with the Landlord.

Issues

13. The Tribunal had to determine:-
 - a. whether it should grant the variations sought in respect of the existing management order;
 - b. whether it should discharge the existing management order, and, if so;
 - c. on what terms or conditions the existing management order should be discharged.

Relevant Law

14. The relevant provisions of the Landlord and Tenant Act 1987 read as follows:-

24 Appointment of manager by a tribunal.

[...]

(9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.

(9A) the tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—

- (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
- (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

(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.

The Hearing

15. The matter was listed for final hearing by way of HMCTS CVP video hearing at 10.00am on 14th August 2024. Mr Bentham attended and was represented by Peter Sibley of Counsel. Mr Blair attended as representative for the Landlord. Mr Bromiley attended as representative for various of the long leaseholders. Mr Habib and various long leaseholders were also in attendance.
16. Prior to the hearing, the Applicant had submitted a common hearing bundle for the use of the Tribunal, together with an updated draft amended management order and a bundle of legal authorities.
17. As the parties had reached a broad consensus on the proposed discharge of the management order, the key points of discussion were:-
 - a. The proposed variations to the management order – especially considering whether all of the garages in the garage blocks remained under the management responsibilities of Mr Bentham for the purposes of budget setting; and
 - b. The proposed conditions of discharge.

Basis of Tribunal's discretion

18. It was firstly established that the relevant legal test to be applied by the Tribunal did not expressly include the requirements set out in section 24(9A) of the LTA 1987. In particular, the Tribunal has a broad discretion and is not strictly required to be satisfied that "*the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made*". This provision is essentially a safeguard which restricts the ability of the original landlord in such proceedings to seek a variation or discharge of a management order where this might put the arrangements back to square one. That same safeguard does not expressly apply where the manager makes his or her own application for variation or discharge. However, the Tribunal will naturally take into account the likely consequences of any such variation or discharge when determining the appropriate course of action.

Whether the garages are managed by the RTM companies

19. There was extensive discussion regarding whether the garages in the garage blocks were "appurtenant property" to which the RTM applied when this was exercised.
20. Mr Sibley referred to the evidence in the witness statement of Mr Bentham showing that the garages exist in blocks, comprising altogether a single structure. There are dividing walls separating each garage, but they share a communal roof. The individual garages are not allocated to residential leaseholders in separate groups with an orderly arrangement, but are instead allocated largely unsystematically, with some occasional groupings, as demonstrated on the plan diagram provided.
21. It was also noted that some of the garages had been sold freehold to third parties. Mr Bentham's oral evidence was that some of these third party freeholders remained unidentified, but that in practice any repairs to them were still done on a communal basis.
22. Mr Habib addressed the Tribunal on the matter and reiterated his written submission that section 112(1) CLRA 2002 includes "garages" within the definition of "appurtenant property". In response, Mr Sibley contended that the Tribunal was bound to apply the authority of *Settlers Court RTM Co Ltd and others v FirstPort Property Services Ltd* [2022] 1 WLR 519, which held that property falling within the broad categories described in section 112(1) would only amount to being within the scope of RTM as set out in section 96(1) if there is "*a very close connection, sufficient to confine the right to manage to functions which the (necessarily) single-building RTM company can properly perform on its own, for the benefit and under the supervision of those tenants who will be directly affected by that performance*" (per Lord Briggs JSC at paragraph 39 of the judgment). He asserted that the effect of this was that garages can be included as "appurtenant property" in a given case, but only if they are truly "appurtenant" to the main premises – it is therefore not an open-ended definition.

23. In that regard, Mr Sibley drew the Tribunal's attention to the applicable provisions of the relevant leases. These included that:-
- a. Under each lease, the original management company / landlord retained the repairing obligations in relation to the entire block of garages in which the allocated garage was situated, not just in relation to each individual garage separately. The consequence would be that a RTM company would have to assume the obligation of maintenance of the whole garage block, and not just of the garages allocated to the leaseholders of its own block.
 - b. Mirroring the above provision, each leaseholder is required under the lease terms to pay for an equal share of the repair and maintenance of the entire block of garages in which the allocated garage was situated, not just in relation to each individual garage separately.
 - c. The structure of each garage unit is excepted and reserved from the demised premises in the lease.
24. That all being the case, Mr Sibley's position was that each lessee might have exclusive use of the interior of an allocated garage, but that they did not have exclusive control of the fabric of the garage as part of the block as a whole.
25. Mr Sibley also referred to the garages being physically located at the far end of the Property, away from the residential buildings, although he conceded that this was not a weighty factor in the circumstances.
26. Mr Bromiley's position was that the leaseholders he represented considered that the garages could form part of the appurtenant property subject to RTM.
27. Mr Habib disputed the extent of the practical difficulties in maintaining different sections of the block roof, and asserted that the corrugated roof structure meant that individual sections could be repaired separately. His main concern was for the leaseholders of Block 1 to be extricated from the need for further involvement.
28. Mr Blair supported the position of Mr Bentham as advanced by Mr Sibley, albeit that he said that if the management order were discharged then he would be content to instruct Block Property Management Limited to manage the retained parts of the Property in alignment with the management functions currently being exercised by the various RTM companies.
29. There was some suggestion that there may be integrated garages contained within some of the residential blocks. This had not been addressed in written evidence beforehand and it was decided that it was not pertinent to the budgetary considerations as impacted by RTM.

Other proposed variations to the existing management order

30. Mr Sibley took the Tribunal through the draft wording of the proposed variations to the existing management order. These were largely uncontroversial until it came to the point about the proposed allocation of costs under the draft budgets. Mr Bromiley and Mr Habib had each advanced proposed wording to deal with the allocation of costs where the proportions had to be adjusted to take account of the RTM being exercised, firstly in relation to Block 1 and then latterly in relation to Blocks 2-6 and 8-16. The Tribunal noted the different proposals for further deliberation between the panel members.
31. An issue was raised by Maurice Myers, a leaseholder, that Mr Bentham's colleagues at Homestead had already taken off £1001 per flat (£81,000 in total) and had only handed over £290,000 of funds to Block Property Management Limited. Mr Bentham denied that this had led to any dispute between him and Block Property Management Limited, and explained that some funds were being retained in anticipation of the outcome of these proceedings.

Proposed discharge of the existing management order

32. As already noted above, it was generally agreed by the parties that the management order should be discharged. The consensus view was that the only functions retained by Mr Bentham were limited to building maintenance for Block 7 (where the Landlord has retained control of part of the block) and the common parts / communal areas of the development. It was felt that the Landlord was just as well placed to manage these aspects as Mr Bentham currently is.

Proposed conditions of discharge

33. The main topic of discussion regarding the proposed discharge was the handover of service charge funds.
34. Mr Habib referred to a ringfenced account of £450,000 collected for major works which had ultimately never taken place. He asserted that of this, some £85,000 had been loaned internally to the general service charge account to fund day-to-day operations and that the amount coming over to his clients was around £81,000 short. He acknowledged that there would be some arrears and said they had requested a reconciliation from Mr Bentham.
35. Mr Bentham stated that he did not propose to collect any further arrears. He also disagreed with the request to provide a generic spreadsheet and said that he would reconcile all payments on a block-by-block basis.
36. Mr Habib raised the issue of who would be entitled to collect arrears owing prior to the date of the RTM being exercised and who would be

required to deal with any applications under section 27A of the Landlord and Tenant Act 1985 relating to Mr Bentham's previous management.

37. John Craig, a leaseholder, raised a concern about the understanding that Mr Bentham's company (Homestead) had been "propping up" the service charge accounts through internal transfers of funds. Mr Bentham agreed that there had been some "propping up" and said that this had been necessary due to the insurance costs increasing from £7000 to £44,000. He said he would explain this as part of his handover.
38. Mr Myers raised an assertion that and that his contribution of £10,000 had already been depleted. Mr Bentham refuted these assertions and said that RICS had previously found no case to answer after an investigation.
39. Mr Habib noted that the management order had enabled Mr Bentham to collect service charge funds in advance, and asked if the Tribunal could make an order to continue that arrangement. The members of the Tribunal observed that this would not be possible, and that those arrangements had already ceased to apply in relation to all of the blocks where the RTM had been exercised.

Analysis

Should the Tribunal grant the variations sought in respect of the existing management order?

40. The proposed variations to Mr Bentham's revised fee schedule appear reasonable given the increasing costs of management and the greater degree of responsibilities which have arisen in the intervening years.
41. The Tribunal has carefully considered the parties' submissions on whether the garages in the garage blocks remain under Mr Bentham's management. The Tribunal concludes that they do. The Tribunal was particularly persuaded by the following factors:-
 - a. The garages are not separated into distinct blocks, with each attached to a specific residential block, but are built in larger clusters which are generally allocated in an unsystematic way.
 - b. The provisions of the lease regarding repairs and maintenance require the management company or landlord (as the case may be) to maintain the entire block in which each garage is located, not just each individual garage separately.
 - c. Each leaseholder who has been allocated a garage only holds the interior space of their garage under the lease, with the Landlord retaining possession of the structure.
42. The above factors lead the Tribunal to conclude that each RTM Company is unable to manage the repairing and maintenance obligations "on its

own” in respect of any garage or group of garages. Because the RTM Companies lack the statutory power enjoyed by a Tribunal-appointed manager to override the express lease terms, and are bound by those terms, they can only manage the repairing and maintenance obligations in respect of any garage or group of garages by acting in concert with each other. However, each RTM Company is a distinct legal entity which has to be capable of operating independently of the others if its directors choose to do so.

43. The Tribunal has also considered the proposed wording and format of the draft budgetary provisions to be contained in the amended management order. The Tribunal considers that Mr Habib’s wording is simpler to understand and apply than that advanced by Mr Bentham. The Tribunal has adapted that wording to take account of its conclusion, set out above, that the garages in the garage blocks remain under Mr Bentham’s management for the duration of the management order.
44. The Tribunal also makes further minor variations to ensure that the wording of the revised order is coherent and takes account of the fact that Mr Bentham is no longer a new manager but has in fact already been managing the development for over 10 years.

Should the Tribunal discharge the existing management order?

45. Although the Tribunal is not strictly required to take into account the factors set out in section 24(9A) LTA 1987, it would be irresponsible of the Tribunal to ignore such considerations altogether.
46. The Tribunal takes account of the fact that the scope of Mr Bentham’s appointment has already been vastly reduced by the RTM having been exercised. The main issues which needed to be resolved at the Property were, and still are, the residential buildings. All bar one of these are now the sole responsibility of the RTM Companies, and the Landlord has an immediate possessory interest within the one building which is not (and it has not been suggested that the Landlord has acted badly – only that his hands have been tied by the limitations of the leases themselves). The Tribunal considers that RTM companies in general benefit from a different relational dynamic and increased buy-in from leaseholders. Each of the RTM Companies only needs to pay for the repairs to its own building, so the financial risk is siloed in comparison to the difficulties which arose historically between 2008 and 2014.
47. The Tribunal has contemplated whether the circumstances could recur which led to a manager being appointed in the first place. This was the parting thought of Mr Blair at the end of the hearing. The possibility cannot be ruled out, but the fact is that the leaseholders have exercised their rights and now have the opportunity to deal with the situation themselves. Because of the operation of CLRA 2002, the Tribunal could not currently stop that now, even if it was minded to do so. The risk presented by management of the communal areas is relatively low, notwithstanding that this includes the garages which are evidently in need

of their own repairs. Under the circumstances, the balance has shifted from where it was in early 2023 and the Tribunal can no longer justify holding Mr Bentham to his appointment against his will, and against the will of many of the leaseholders at the Property.

48. The Tribunal considers that it is just and equitable to discharge the order. The Tribunal also considers that conditions should be imposed to ensure an orderly transfer of management.

On what terms or conditions should the existing management order be discharged?

49. The provisions of section 94 CLRA 2002 already impose a statutory duty on Mr Bentham to pay “*any accrued uncommitted service charges held by him on the acquisition date*” to the respective RTM Companies. This will be referred to in the conditions of discharge for completeness.
50. The position of service charge arrears which accrue while a management order is in force, and whether (and by whom) they can be recovered once the management order expires, was considered by the Court of Appeal in *Chuan-Hui v V K Group* [2021] EWCA 403. In essence, this provides that once a management order expires, any entitlement to sue for sums due under a lease reverts in the person who was originally entitled to those sums before the management order took effect. The Tribunal is, however, not in a position to offer advice to the parties as to whether or how they should apportion or enforce any entitlement to any service charge arrears which were owing at the time when the RTM was acquired.
51. The Tribunal adopts the proposed conditions of discharge, which were largely undisputed – with some further amendments to ensure that it will operate effectively, and to take account of certain expectations on Tribunal-appointed managers at the end of their appointment as enunciated by the Chamber President in the Practice Guide on the Appointment of Managers.

Name:
Tribunal Judge L. F. McLean
Regional Surveyor Mr N. Walsh

Date: 19th September 2024

Rights of appeal

1. 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.
2. 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.

3. 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.
4. 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.
5. 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.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

APPENDIX 1 – MANAGMENT ORDER (AS VARIED)

Interpretation

In this Order:

- (a) "Common Parts" means any garden area, refuse store, cycle store, security gates, lifts, paths, driveways, halls, staircases and other access ways and areas (if any) within the Premises that are provided by the Landlord for common use by the Lessees or persons expressly or by implication authorised by them
- (b) "Functions" means any functions in connection with the management of the Premises
- (c) a reference to a "Garage" shall, for the avoidance of doubt, only mean a garage in a Garage Block and shall not include any integrated garages contained within the blocks of flats
- (d) "Garages Block" means a separate block of Garages within Lindsay Court
- (e) "the Landlord" means Lindsay Court Securities Limited or their successors in title to the reversion immediately expectant upon the Leases
- (f) "Leases" means the long leases vested in the Lessees
- (g) "Lessee" means a tenant of a dwelling situated within Lindsay Court holding under a long lease as defined by section 59(3) of the Landlord & Tenant Act 1987 ("the 1987 Act")
- (h) "the Manager" means Mr David Bentham of 50 Wood Street, St Anne's on Sea, FY8 1QG
- (i) "the Premises" means all that property known as Lindsay Court, New Road, Lytham, St Annes, FY8 2SR ("Lindsay Court") consisting of 96 flats and the Garage Blocks located on the Property, but there shall be excluded from the definition of "the Premises" any blocks of flats and "appurtenant property" (within the meaning of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")) over which the Right to Manage ("RTM") has been acquired under the 2002 Act since 13th March 2014, from such time as the RTM has been acquired in relation to any such respective blocks
- (j) "The Management Company" means Lindsay Court (St Annes) Management Co Ltd being the management company under the Leases at the Premises and which is in dissolution or which has already been dissolved
- (k) A reference to a numbered "Block" in the context of a block of residential flats is a reference in accordance with the numerical designations which have been historically applied in relation to Lindsay Court
- (l) "The Tribunal" means the First-tier Tribunal (Property Chamber)

Preamble

- i. Various of the Lessees have formed companies for the purpose of exercising the RTM at the Premises to date.
- ii. The Applicant, being already been appointed as Manager under Pt.II, Landlord and Tenant Act 1987 by virtue of an order of the Tribunal originating from 13th March 2014, applied for the terms of his appointment to be varied (and, more latterly, discharged) to reflect the acquisition of the Right to Manage by Blocks 1 to 6 and 8 to 16 and to seek variation of the Management Fees awarded under the initial order.
- iii. The Tribunal is satisfied that the circumstances upon which an order can be made by virtue of Section 24(9) of the 1987 Act are made out; and that it is just and convenient to grant the orders sought, but on the terms set out herein.

ORDER

1. Until such time as the Tribunal grants the discharge of Mr. David Bentham as appointed manager, the following provisions will apply.
2. For the avoidance of doubt this Order supplements but does not displace covenants under the Leases and the Lessees remain bound by them. Where there is a conflict between the provisions of the Order and the Leases, the provisions of the Order take precedence.
3. Subject to the antecedent partial discharge of his appointment (by operation of law, pursuant to the 2002 Act), Mr. David Bentham shall remain appointed as the Manager (including such functions of a Receiver as are specified herein) of the Premises pursuant to s24 of the 1987 Act and shall have for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the applicable Leases to carry out the management functions of the Landlord and/or Management Company and in particular:
 - a. To receive all service charges, interest and any other monies payable under the Leases and any arrears due thereunder, the recovery of which shall be at the discretion of the Manager.
 - b. The right to treat the service charge financial year as running from 1st January to 31st December in each year that this Order is in place.
 - c. The power and duty to carry out the obligations of the Management Company and Landlord contained in the Leases and in particular and without prejudice to the foregoing,
 - i. The obligations of the Management Company or Landlord to provide services and to insure the Buildings; and

- ii. The obligations of the Management Company or Landlord with respect to repair and maintenance; and
 - iii. The power of the Management Company or Landlord to grant consent (save that the Manager may not give consent in circumstances that would not have been available to the Management Company or Landlord under the provisions of the 2002 Act.
 - iv. The power, if so required, to carry out the following repairs/works and recover the cost of the same to include professional fees incurred in relation to same as part of the service charges:
 - 1. Repairs to the Roofs and Windows of the Buildings
 - 2. Repairs to the Garages Blocks;
 - 3. Concrete Repairs to the exterior of the Buildings,
- d. The power to delegate to other employees of Homestead Consultancy Services Limited, appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions.
- e. The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
- f. The power in his own name or on behalf of the Management Company or Landlord to bring, defend or continue any legal action or other legal proceedings in connection with the Leases of the Premises including but not limited to proceedings against any Lessee in respect of arrears of service charges, or other monies due under the Leases and/or this order and to make any arrangement or compromise on behalf of the Management Company or Landlord. The Manager is authorised to recover the reasonable costs of proceedings to enforce the terms of the Lease and/or this order to include fees paid to a solicitor, barrister or surveyor from the individual Lessees as administration charges payable under the terms of this order.
- g. The power to commence proceedings or such other enforcement action as is necessary to recover sums due from the Management Company or Landlord pursuant to this order or to enforce compliance by the Management Company or Landlord with the terms of this order.
- h. The power to enter into or terminate any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of his functions.
- i. The power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to s42 of the Landlord and Tenant Act 1987. The

Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the lease (if any) or to powers given to him by this Order) and all other monies received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund.

- j. The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the Management Company or Landlord or any Lessee or owing sums of money under his Lease or Transfer respectively.
 - k. The power to borrow all sums reasonably required by the Manager for the performance of his functions and duties, and the exercise of his powers under this Order in the event of there being any arrears, or other shortfalls, of service charge or contributions due from the Lessees, such borrowing to be secured (if necessary) on the interests of the defaulting party (i.e. on the leasehold interest of any Lessee, PROVIDED THAT the Manager shall not secure any borrowing as aforesaid without the consent of the defaulting party (not to be unreasonably withheld), or in default of that consent, without further Order of the First Tier Tribunal (Property Chamber).
4. The Manager shall manage the Premises in accordance with:-
- a. the Directions of the Tribunal and the Schedule of Functions and Services attached to this Order;
 - b. the respective obligations of all parties (i.e. the Landlord and Lessees and Management Company under the Leases) and in particular with regard to repair, decoration, provision of services and insurance of the Premises; and
 - c. the duties of managers set out in the Service Charge Residential Manager 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 s87 of the Leasehold Reform Housing and Urban Development Act 1993.
5. From the date of this Order, and save as otherwise provided by statute and/or until such time as it is discharged, no other party shall be entitled to exercise a management function in respect of the Premises where the same is a responsibility of the Manager under this Order.
6. From the date of this Order and until such time as it is discharged, the Management Company and Landlord shall not, whether by itself/themselves or any agent, servant or employee, demand any further payments of service charges, administration charges or any other monies from the Lessees at the Premises, such functions having been transferred to the Manager.

7. The Landlord and the Lessees and any agents or servants thereof shall give reasonable assistance and cooperation to the Manager in pursuance of his duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of his said duties and powers.
8. Without prejudice to the generality of the foregoing hereof:-
 - a. The Landlord, whether by itself, its agents, servants or employees, shall within 14 days of date of this order, and only to the extent that this has not already been done previously, deliver to the Manager all such accounts, books, papers memoranda, records, computer records, minutes, correspondence, emails, facsimile correspondence and other documents as are necessary to the management of the Premises as are within its custody, power or control together with any such as are in custody, etc of any of its agents, servants or employees in which last case it shall take all reasonable steps to procure delivery from its agents, servants or employees.
 - b. Within 14 days of compliance of paragraph 4(a) above, and only to the extent that this has not already been done previously, the Manager shall decide in his absolute discretion which contracts he will assume the rights and liabilities under.
 - c. The Landlord, whether by itself, its agents, servants or employees, shall within 14 days of date of this order, and only to the extent that this has not already been done previously, deliver to the Manager all keys, fobs and other access/ entry cards to the Premises.
 - d. The Landlord, whether by itself, its agents, servants or employees, shall within 14 days of date of this order, and only to the extent that this has not already been done previously, deliver to the Manager all keys to electricity, gas, water and any other utility meters located in the Premises. To this end, the Landlord shall give the Manager full access to the electricity, gas and water meters fuse board and any other utility meters located in the Premises.
 - e. The Landlord, whether by itself, its agents, servants or employees, shall within 14 days of date of this order, and only to the extent that this has not already been done previously, give full details to the Manager of all sums of money it holds in the service charge fund and any reserve fund in relation to the Premises, including copies of any relevant bank statements and shall forthwith pay such sums to the Manager.
 - f. The rights and liabilities of the Landlord or Management Company arising under any contracts of insurance to the Premises shall, to the extent only that this has not already occurred previously, from the date hereof become rights and liabilities of the Manager.
 - g. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges

payable under the Leases) in accordance with the Schedule of Functions and Services attached.

9. The Tribunal, being satisfied that the liability for service charges under the Leases will not result in 100% recovery of the costs and expenditure in providing services to the Premises, orders all of the long leaseholders of Lindsay Court to pay a reasonable share of the expenditure incurred by the Manager under the terms of this order and demanded as a service charge, so as to ensure that the Manager can obtain 100% service charge recovery and the Manager is authorised to demand, claim and, if necessary, sue for the same. In the event that legal proceedings are necessary the Manager is entitled to recover the reasonable legal costs to include fees payable to a solicitor, barrister and other professional fees and disbursements in relation to such proceedings under the terms of this order as expenditure under the Service Charges.
10. Between 1st January 2023 and 23rd April 2024, a “reasonable share” in this order is to be calculated on the following basis:-
 - a. All Lessees will contribute equally (a 1/96th share per Lease of which each Lessee is a tenant) to the costs incurred by the Manager in connection with the discharge of his duties under the management order of the Tribunal (management, maintenance and insurance etc.) in respect of all common parts and communal areas of Lindsay Court, other than (i) those costs incurred in respect of Block 1 and its “appurtenant property” (within the meaning of the 2002 Act) and (ii) those costs incurred in respect of the Garages Blocks.
 - b. All Lessees (except, for the avoidance of doubt, for the Lessees of Block 1) will contribute equally (a 1/6th share per lease of which each Lessee is a tenant) to the costs incurred by the Manager in connection with the discharge of his duties under the management order of the Tribunal (management, maintenance and insurance etc.) in respect of the Block in which each such Lessee holds a long lease.
 - c. All those Lessees who hold a long lease which includes a Garage shall contribute equally among themselves to the costs incurred by the Manager in connection with the discharge of his duties under the management order of the Tribunal (management, maintenance and insurance etc.) in respect of the Garages Blocks.
11. From 24th April 2024, a “reasonable share” in this order is to be calculated on the following basis:-
 - a. All Lessees will contribute equally (a 1/96th share per Lease of which each Lessee is a tenant) to the costs incurred by the Manager in connection with the discharge of his duties under the management order of the Tribunal (management, maintenance and insurance etc.) in respect of all common parts and communal areas of Lindsay Court, other than (i) those costs incurred in respect of Blocks 1 to 6 inclusive and Blocks 8 to 16 inclusive and their “appurtenant property” (within

the meaning of the 2002 Act) in each instance and (ii) those costs incurred in respect of the Garages Blocks.

- b. All Lessees of Block 7 will contribute equally (a 1/6th share per lease of which each Lessee is a tenant) to the costs incurred by the Manager in connection with the discharge of his duties under the management order of the Tribunal (management, maintenance and insurance etc.) in respect of Block 7.
 - c. All Lessees who hold a Lease which includes a Garage shall contribute equally among themselves to the costs incurred by the Manager in connection with the discharge of his duties under the management order of the Tribunal (management, maintenance and insurance etc.) in respect of the Garages Blocks.
12. The Tribunal being satisfied that the Manager shall in the performance of his functions under this Order require immediate funding to carry out necessary works and services authorises the Manager to issue a budget (complying with the requirements of paragraphs 10 and 11 above) to each Lessee and the Tribunal orders the Lessees to pay a reasonable share of the said budget in two equal payments in advance the first payment being due 21 days after issue of the copy budget and demand and the second payable six months thereafter. Nothing within this order affects the liability of the Lessees to challenge the reasonableness of the sums pursuant to section 27A of the Landlord and Tenant Act 1985.
13. The Tribunal, being satisfied that the Manager will require funding throughout the period of Management, authorises the Manager to issue a budget for the Service Charge Year ended 2024 (complying with the requirements of paragraphs 10 and 11 above and thereafter in common form), and a budget of expenditure at the commencement of each Accounting Period to include the anticipated costs of repairs, works and services to the Premises in accordance with the responsibilities of the Landlord and Management Company under the Leases and as provided herein, and the Tribunal orders the Lessees to make payment of a reasonable share of the budget by two equal payments in advance in each Accounting Period, the first payable 21 days after issue of the demand for payment and the second payment due six months thereafter. As soon as practicable after the end of the Accounting Period the Manager is to certify the Accounts and provide a copy of same to the Lessees and the surplus of any payment over budgeted sums paid to be credited to each Lessee's account and the balance of actual expenditure over budgeted sums is to be paid by the respective Lessee within 21 days of demand.
14. The Tribunal being satisfied that the Manager in the performance of his functions under this Order may need to schedule major works to address the issues of external repairs to the Buildings and Garages authorises the Manager to issue a separate demand in relation to the same (complying with the requirements of paragraphs 10 and 11 above) and orders the respective leaseholders to make a payment within 28 days of demand of a reasonable share of the proposed costs of the works as budgeted and

demanding by the Manager having carried out consultation under Section 20 of the Landlord and Tenant Act 1985 where required. Nothing within this order restricts the ability of the Lessees to challenge the reasonableness of the sums pursuant to section 27 of the Landlord and Tenant Act 1985.

15. The Tribunal being satisfied that conditions existed which made it reasonable and practicable for the Applicant to issue this application in the interest of all parties at the Premises order that the Applicant's reasonable costs to include legal fees incurred (tribunal fees, fees payable to a solicitor, counsel's fees) and the Manager's costs in relation to this application to be recoverable as a service charge item from the Lessees. The Manager is authorised to reimburse such costs to the party incurring the same and to invoice such sums through the Service Charges for the Leases. Nothing within this order restricts the ability of the Lessees to challenge the reasonableness of the same pursuant to section 27A of the Landlord and Tenant Act 1985.
16. The Manager shall in the performance of his functions under this Order exercise the reasonable skill, care and diligence to be 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 and shall ensure he has appropriate professional indemnity cover providing copies of the current cover note upon request by any Lessee, the Landlord, or the Tribunal.
17. The Manager shall act fairly and impartially in his dealings in respect of the Premises.
18. The Manager is directed to register this Order against the Landlord's freehold estate registered under title number LA890946.
19. The Manager shall be appointed from the date of this Order and – subject to paragraph 1 above – the duration of his appointment shall be limited to a further period of three years from the date hereof.
20. The obligations contained in this Order shall bind any successor in title and the existence and terms of this Order must be disclosed to any person seeking to acquire either a leasehold interest (whether by assignment or fresh grant) or the freehold.

Liberty to apply

21. The Manager may apply to the First Tier Tribunal (Property Chamber) for further directions, in accordance with s.24(4), Landlord and Tenant Act 1987.
22. Such directions may include, but are not limited to:
 - a. Any failure by any party to comply with an obligation imposed by this Order;
 - b. For directions generally;

- c. Directions in the event that there are insufficient sums held by him to discharge his obligations under this Order and/or to pay his remuneration.

SCHEDULE

FUNCTIONS AND SERVICES

Financial Management:

1. Prepare an annual service charge budget administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees.
2. Demand and collect service charges, insurance premiums and any other payments due from the Lessees; Instruct solicitors to recover any unpaid service charges, and any other monies due to the Manager and/or Respondent.
3. Create a form of reserve fund.
4. Produce for inspection, (but not more than once in each year) within a reasonable time following a written demand by the Lessees or Landlord, relevant receipts or other evidence of expenditure, and provide VAT invoices (if any).
5. Manage all outgoings from the funds received in accordance with this Order in respect of day to day maintenance and pay bills.
6. Deal with all enquiries, reports, complaints and other correspondence with Lessees, solicitors, accountants and other professional persons in connection with matters arising from the day to day financial management of the Premises.

Insurance:

7. Take out on behalf of the Landlord and in accordance with the terms of the Leases an insurance policy in relation to the Buildings and Garages with a reputable insurer, and provide a copy of the cover note to all Lessees and the Applicant.
8. Manage or provide for the management through a broker of any claims brought under the insurance policy taken out in respect of the Premises with the insurer.

Repairs and Maintenance:

9. Deal with all reasonable enquiries raised by the Lessees in relation to repair and maintenance work, and instruct contractors to attend and rectify problems as necessary.
10. Administer contracts (to include those entered into on behalf of the Respondent in the Manager's discretion), and check demands for payment for goods, services, plant and equipment supplied in relation to such contracts.
11. Manage the Common Parts, and service areas of the Premises, including the arrangement and supervision of maintenance.
12. Carry out regular inspections (at the Manager's discretion but not less than four

per year) without use of equipment, to such of the Common Parts of the Premises as can be inspected safely and without undue difficulty to ascertain for the purpose of day-to-day management only the general condition of those Common Parts.

Major Works:

13. In addition to undertaking and arranging day-to-day maintenance and repairs, to arrange and supervise major works which are required to be carried out to the Premises (such as extensive interior or exterior redecoration or repairs required to be carried out under the terms of the Leases or other major works where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on the Lessees and supervise the works in question).

Administration and Communication:

14. Deal promptly with all reasonable enquiries raised by Lessees including routine management enquiries from the Lessees or their solicitors.

15. Provide the Lessees with telephone, fax, postal and email contact details and complaints procedure.

16. Keep records regarding details of Lessees, agreements entered into by the Manager in relation to the Premises and any changes in Lessees.

Fees:

17. Fees for the above mentioned management services (with the exception of supervision of major works and the services listed in the schedule enclosed at Annex 1 labelled Services Revised 2023) would be a fee of £200 plus VAT per unit per annum from the 1st January 2023 for the remainder of the appointment, save that the Manager has permission to apply for a review by the Tribunal of the proposed fee at any time after the first 12 months.

18. An additional charge shall be made in relation to the arrangement and supervision of major works (including the preparation and service of any statutory consultation notices) on the basis of a fee of 10% of the cost of the works plus VAT.

19. Additional charges shall be made in relation to Services listed in the schedule enclosed at Annex 1 labelled Services Revised 2023 on the charging basis identified for each.

ANNEX 1

Services Revised 2023

APPENDIX III

ADDITIONAL CHARGES

ADDITIONAL SERVICES	CHARGING BASIS Where not included in file services
Drawing up and reviewing risk assessment plans, Advising on health & safety matters and other legislative requirements	At cost+ 20% plus VAT
Preparing specifications, obtaining tenders and supervising major works, Preparing and monitoring major building works not covered by annual contracts including serving the required notices, instructing and liaising with specialist consultants, inspecting work in progress and handling retentions and raising surcharges,	10% of cost of contract plus VAT
Advertising and recruiting site staff on behalf of the Client	10% of staff annual wage
Dealing with any pension issues relating to site staff	At cost + 10% of staff members annual wage
Preparing replacement cost assessment for insurance valuation purposes on buildings and landlord contents	At cost + 10% arrangement fee plus VAT
Preparing schedules of dilapidation or condition in respect of individual dwellings	At cost+ 10% arrangement fee plus VAT
Dealing with requests for alterations by leaseholders and related party wall matters	£60 + VAT to be recharged
Legal recovery of unpaid service charges or ground rents or action for non-compliance with leases including instructing solicitors and preparing for and attending Court/LVT	Arrears letters - £60 + VAT Mortgagee letter - £200 Court action - £100 + vat Court/LVT attendance £150 + vat+ expenses per hour
Preparing Client company Accounts	At Cost
Attending meetings beyond the specified 4 meetings per annum	Travel expenses @ 40p per mile+ £100 Per hour
Fees of specialist advisors	At cost
Providing any form of services to the Client over and above this Management Agency Agreement in relation to the exercise by the lessees of Enfranchisement, the Right to Manage or as the result of the Appointment of a Manager by an LVT	£75 per hour plus VAT
Dealing with taxation issues relating to trust fund interest	Outsource to accountant at cost
Answering of queries from the lessees where excess work arises from the unreasonable expectations of those lessees	£75 per hour plus VAT
Providing detailed legal advice on any of the above	Outsource to solicitors at cost

LIST OF SUPPLEMENTARY CHARGES

TYPE	CHARGES
DOCUMENT FEE	£200,00 plus VAT Repossession £400 + VAT
SHARE FEE/ REGISTRATION FEE	£200.00 plus VAT
DEED OF COVENANT	£80.00 plus VAT
NOTICE FEE	£80.00 plus VAT
RE-MORTGAGE FEE	£80,00 plus VAT
RETRO CONSENT/CONSENT	£100,00 plus VAT

APPENDIX 2 – ORDER FOR DISCHARGE

Interpretation

In this Order:

- (a) "Common Parts" means any garden area, refuse store, cycle store, security gates, lifts, paths, driveways, halls, staircases and other access ways and areas (if any) within the Premises that are provided by the Landlord for common use by the Lessees or persons expressly or by implication authorised by them
- (b) "Functions" means any functions in connection with the management of the Premises
- (c) a reference to a "Garage" shall only mean a garage in a Garage Block and shall not include any integrated garages contained within the blocks of flats
- (d) "Garages Block" means a separate block of garages within Lindsay Court
- (e) "the Landlord" means Lindsay Court Securities Limited or their successors in title to the reversion immediately expectant upon the Leases
- (f) "Leases" means the long leases vested in the Lessees
- (g) "Lessee" means a tenant of a dwelling situated within Lindsay Court holding under a long lease as defined by section 59(3) of the Landlord & Tenant Act 1987 ("the 1987 Act")
- (h) "the Management Order" means the management order in respect of Lindsay Court originally made by the Tribunal on 13th March 2014, extended by decision dated 16th March 2017, subsequently extended by decision dated 28th February 2020 "until further order", and now further extended and varied on the same date as this Order
- (i) "the Manager" means Mr David Bentham of 50 Wood Street, St Anne's on Sea, FY8 1QG
- (j) "the Premises" means all that property known as Lindsay Court, New Road, Lytham, St Annes, FY8 2SR ("Lindsay Court") consisting of 96 flats and the Garage Blocks located on the Property, but there shall be excluded from the definition of "the Premises" any blocks of flats and "appurtenant property" (within the meaning of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")) over which the Right to Manage ("RTM") has been acquired under the 2002 Act since 13th March 2014, from such time as the RTM has been acquired in relation to any such respective blocks
- (k) "The Management Company" means Lindsay Court (St Annes) Management Co Ltd being the management company under the Leases at the Premises and which is in dissolution or which has already been dissolved

- (l) A reference to a numbered “Block” in the context of a block of residential flats is a reference in accordance with the numerical designations which have been historically applied in relation to Lindsay Court
- (m) “The Tribunal” means the First-tier Tribunal (Property Chamber)
- (n) “Discharge Date” means 1st November 2024 or such later date as is provided for in relation to paragraph 3 below
- (o) “RTM Companies” means the companies which have acquired the Right to Manage in respect of any part or parts of Lindsay Court under the 2002 Act since 13th March 2014

Preamble

- i. Various of the Lessees have formed companies for the purpose of exercising the RTM at the Premises to date.
- ii. The Applicant, being already appointed as Manager under Pt.II, Landlord and Tenant Act 1987 by virtue of an order of the Tribunal originating from 13th March 2014, applied for the terms of his appointment to be varied (and, more latterly, discharged) to reflect the acquisition of the Right RTM by Blocks 1 to 6 and 8 to 16 and to seek variation of the Management Fees awarded under the initial order.
- iii. The Tribunal notes that from 24th April 2024, Blocks 2 to 6 and 8 to 16 acquired the RTM, in addition to Block 1 which had already acquired RTM previously, such that the scope of the Management Order had become limited to just Block 7 and the Common Parts.
- iv. The Tribunal notes that the management of the Premises will revert to the Landlord on the discharge of the Management Order.
- v. The Tribunal is satisfied that the circumstances upon which an order can be made by virtue of Section 24(9) of the 1987 Act are made out; and that it is just and convenient to grant the orders sought, but on the terms set out herein.

ORDER

Discharge of Appointment

- 1. Pursuant to Section 24(9) of the 1987 Act, the Manager shall be discharged from his appointment under the Management Order (and the Management Order shall thereupon lapse) at 5.00pm on the Discharge Date, on condition and provided always that the Manager complies with

the requirements of paragraph 6 below of this Order (“the Conditions of Discharge”).

2. The Management Order shall continue in force, and the Manager’s appointment shall also continue thereunder, until 5.00pm on the Discharge Date.
3. In the event that the Manager fails to comply with any the Conditions of Discharge, then each party has liberty to apply to the Tribunal to postpone the Discharge Date for such period and on such conditions as the Tribunal thinks fit.
4. For the avoidance of doubt, the right to recover arrears of any monies owing to the Manager under the Management Order accrued during the Manager’s appointment up to and including the Discharge Date shall revert by operation of law in the person(s) who was/were originally entitled to those sums before the Management Order took effect.
5. The rights and liabilities of the Manager under any contract entered into by him in connection with the management of the Premises pursuant to powers conferred on him by the Management Order shall become the rights and liabilities of the Landlord with effect from 5.00pm on the Discharge Date, unless the Manager terminates such contracts on or before that time.

Conditions of Discharge

6. The mechanism for the handover of the management of the Premises from the Manager to the Landlord shall be subject to the following provisions:
 - a. The Manager shall firstly complete the handover of management of any premises over which the Right to Manage (“RTM”) has been acquired under the 2002 Act since 13th March 2014. This shall include the transfer of any remaining service charge funds to which the various RTM Companies are entitled, and the provision of relevant management information (as defined in sub-paragraph c. below) held by the Manager or held by third parties instructed by the Manager in connection with the Management Order.
 - b. The Manager shall co-operate with the Landlord in relation to the handover of the management of the Premises and also in relation to all matters in connection with the Manager’s management of the Premises, including (but not limited to) any proceedings issued in connection with the Manager’s management of the Premises.
 - c. The Manager shall co-operate with the Landlord in respect to the supply of management information held by the Manager or held by third parties instructed by the Manager in connection with the Management Order. The term “management information” includes:-
 - i. closing accounts for the 2024 service charge year and copy invoices of expenditure held.

- ii. Service Charge debtor lists
 - iii. Copy Surveyor reports, Fire Risk Assessments, Health & Safety reports
 - iv. Historical accounts and invoices as held by the Manager in relation to the Premises
 - v. The Property Management Files
 - vi. Copy contracts and lists of suppliers
 - vii. Utility Information
 - viii. Correspondence and contact details for Leaseholders
 - ix. Copy communal keys and fobs as may be held.
- d. The Manager shall, on or before the last day of his appointment, close the bank account(s) into which the Lessees have paid any sums demanded by the Manager pursuant to the Management Order.
- e. The Manager shall, on or before the last day of his appointment, transfer to the Landlord all residual service charge funds held by the Manager at that date.
- f. If he has not already done so, the Manager shall by 1st November 2024 send out a letter to those Lessees on whom demands have been served notifying them as to how payments to the Landlord should be made after the Discharge Date.
- g. The Manager shall provide to the Landlord as soon as practicable, and in any event no later than the last day of his appointment, electricity readings to enable any billing adjustments to be made for the period to the Discharge Date.
- h. The Manager must within two months of the Discharge Date:
 - i. prepare final closing accounts and send copies of the accounts and a final report to the Landlord and the Lessees, who may raise queries on them within 14 days; and
 - ii. answer any such queries within a further 14 days.

Obligations upon the Landlord

- 7. The following provisions apply to the Landlord:-
 - a. The Landlord shall co-operate with the Manager with the handover of the management of the Premises and also in relation to all matters in connection with the Manager's management of the Premises, including but not limited to any proceedings and liabilities for which the Landlord or the Manager shall be liable.
 - b. The Landlord shall not give disclosure or inspection of, or provide, documents to any party, person, company or other entity which are confidential and/ or subject to legal professional privilege or common interest privilege unless ordered by a court or tribunal of competent authority, or by agreement of the relevant parties.

- c. The Tribunal directs that 1 month after the Discharge Date, any entry against the Landlord's freehold estate registered under title number LA890946 which has been made to protect the Management Order shall be cancelled and the Landlord shall thereafter apply forthwith to the Land Registry to give effect to this direction.
- 8. The Manager may, subject to any further order, rely on the indemnity contained in paragraph 8.g. of the Management Order subject to the following:-
 - a. It is limited to costs and disbursements of the Manager dealing with handover to the Landlord and any other matters or proceedings with which he is required and/or authorised to deal by virtue of the Management Order or this Order, including cooperating with the Landlord in connection with proceedings arising from the Management Order.
 - b. The Manager will issue invoices for work done on a monthly basis which will include a full narrative. Except where the issue has already been determined by a Tribunal or Court, the invoices shall be payable to the Manager and recoverable by the Landlord under the terms of the Management Order as a service charge.
- 9. The Manager shall be given notice of any application to the Tribunal in connection with the Premises which relates to his period of appointment as manager.

General

- 10. The parties have liberty to apply in respect of any matter in connection with the period of the Manager's appointment as manager and this Order, including for the purposes of enforcement.