FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/40UB/LAM/2024/0607
Property	**:**	The Old Courthouse, Waterloo Road, Frome, Somerset, BA11 3FE
Applicants	**:**	Veronica Southern (1) Sarah Elizabeth Greenland-May (2) Sarah Deacon (3)
Representative	**:**	----
Respondent	**:**	David Markam Ingle Mark Andrew Bannister
Representative	**:**	----
Manager	**:**	Tarragon Finn
Type of Application	**:**	Appointment of Manager- section 24 of the Landlord and Tenant Act 1987
Tribunal Members	**:**	Judge J Dobson Mr P Cliffe- Roberts FRICS Mr M Jenkinson
Date of Hearing	**:**	21st March 2025
Date of Decision	**:**	31st March 2025

DECISION

Summary of Decision

1. **The Applicants' application for the appointment of a manager is granted.**

2. **The Tribunal appoints Ms Tarragon Finn as Manager of the Property for a term commencing on 15th April 2025 and ending, subject to any extension, on 31st March 2028.**

3. **The Applicants' application that the Respondents' costs of the proceedings may not be recovered as service charges is granted.**

Background

4. The Applicants are the lessees of flats at The Old Courthouse, Waterloo Road, Frome, Somerset, BA11 3FE ("the Property"), more specifically Flat 7 situated on the 2nd floor (1st and original Applicant; Flat 3 situated on the 1st floor immediately below Flat 7 (2nd Applicant) and Flat 6 (3rd Applicant). The Respondents are the freeholders of the Property. Five of the flats are not the subject of leases, including Flat 11 which is situated within the roof area – see below- and directly above Flat 7, and so are owned solely by the Respondents.

5. The Property was originally- developed in or about 2008 by a company called FTC Developments Limited. There is the building in which the flats are situated ("the Building") and outdoor areas to the rear, including car parking. The Building contains twelve flats in total across four floors, together with two commercial units. Those commercial units are leased to one lessee and each has been separately sub- leased.

6. There is also- and this has been the cause of some confusion- another limited company called FTC Management Limited ("FTCML"). Each flat lessee(s) holds a share in that, as does the lessee of the commercial leases per lease, hence there are fourteen shares in total. Mr Bannister, the 2nd Respondent, is the only director of that company. The status of that company in respect of the Building is at best unclear. That is returned to below.

7. The Respondents (or on paper at least potentially FTCML) have instructed managing agents to undertake the day- to- day management. The current agents, BNS, are the third ones identified.

8. The 1st Applicant served a Notice [42- 57] pursuant to section 22 of the Landlord and Tenant Act 1987 ("the 1987 Act") dated 27th September 2024 asserting breaches of various provisions of the lease in the Second Schedule, detailed in the Third Schedule and with required action in the Fourth Schedule within a period of 20 working days. It is not necessary to set the contents out in any detail, but it merits identifying that the most significant concern was with leaks into the 1st Applicant's flat in two places, one for several years.

The Applications and History of the Case

9. The 1st Applicant made an application [21- 31] dated 24th September 2024 seeking the appointment of a manager (the/a "Manager" or "Proposed Manager" as appropriate) for the Property pursuant to section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act"). An ancillary application was made [32- 41] seeking an order that the Respondents' legal costs of the proceedings should not be recoverable as service charges.

10. Directions [15- 20] were first issued on 11th November 2024 which provided for steps to be taken to prepare the parties cases for final hearing, including the need for the Applicants to identify a suitable Proposed Manager. A bundle for the final hearing was directed to be provided by the 1st Applicant. Further Directions, not in the hearing bundle, were given adding- so in respect of both the main application and the ancillary one- the other two Applicants separately. Other Directions were given in relation to other case management applications, which do not need to be detailed.

11. A bundle was provided comprising 430 pages. Whilst the Tribunal has read the majority of the bundle, the Tribunal does not refer to many of the documents contained in detail in this Decision, it being impractical and unnecessary to do so. That should not be taken to suggest that the Tribunal failed to read or take appropriate account of any such. Insofar as the Tribunal does refer to specific pages from the bundle, the Tribunal does so by numbers in square brackets [ ] (both above and below) and by reference to pages of the PDF bundle.

12. The Applicant identified in the application Ms Finn as the Proposed Manager. A management plan, details of insurance and other documents were provided by her [421- 430].

The Lease(s)

13. A copy of the lease of Flat 7 ("the Lease") [392- 410] is provided in the bundle. That is dated 12th August 2010 for a term of 999 years and made between the original developer and the first lessee of Flat 7. There is no separate party being a management company or otherwise.

14. No other example of a lease of a flat was provided but the Tribunal understands the others to be in the same or substantively the same terms.

15. The Building is defined in the manner in this Decision. The Property as a whole is termed "the Premises"'. The "Common Parts" include the main structures, roofs and external walls amongst other elements, very much in the usual way. The external areas are also included in that definition.

16. The glass in the windows is indicated by the First Schedule to fall within the given flat and the window frames to fall within the repairing obligations of the freeholder. The Lease does so by excepting the parts of the Building for which the freeholder is responsible from the demise but

then excluding from that exception the glass in the windows, which is convoluted way of drafting the provision and is less clear than it could helpfully be. The relevance is that any part of any window and related structure falls within the responsibility of the Respondents, except the glass in the windows of the seven flats which are the subject of leases. That was mentioned specifically in the hearing.

17. The freeholder covenants to repair, maintain, decorate and so on the Common Parts and also conduits such as pipes gutters (and various others). The freeholder can instruct managing agents. The Respondents can, but are not required to, create a sinking fund.

18. The lessees covenants to pay service charges of 10.34% of the Respondents' costs of fulfilling their obligations, including the cost of insurance and any agents fees. The amount of the service charges for a given year is to be agreed or certified on behalf of the freeholder by 25th March of any given year. Payment is to be made on account for the current year of the equivalent of the sum payable for the previous year. Half of the sum is payable each within 28 days of 25th March and by 29th September. subsequently any balance due is payable. It is provided that the lessees should also pay any balance sum unpaid from the previous year and will be credited with any overpayment. Further sums may be payable on demand. There is additionally and separately rent of £200.00 payable in advance on 25th March of each year. It not set out in terms what the accounting year is, although logically it would seem to have been intended to end in advance of 25th March so as to enable agreement or certification on that date. Whilst the wording used in the Lease is not as simple as it could have been, the general mechanism adopted is common and uncomplicated.

19. The Tribunal does not consider it necessary to set out the contents of the Lease at greater length in this Decision. There was no dispute between the parties about the provisions and there is nothing else of obvious impact on the Decision.

The Law

20. The relevant statutory provisions in respect of this application are found in s24 of the 1987 Act. The provisions read as follows:

24 Appointment of a manager by [a .....tribunal]

(1) [The appropriate tribunal] may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this part applies-
  (a) Such functions in connection with the management of the premises, or
  (b) Such functions of a receiver,
  or both, as [the tribunal] thinks fit.

(2) [The appropriate tribunal] may only make an order under this section in the following circumstances, namely-
  (a) Where [the tribunal] is satisfied-
  (i) that [any relevant person] either is in breach of any obligation owed by him, to the tenant under his tenancy and relating to the management

of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii) .....

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

(ab) where [the tribunal] is satisfied-

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) That it is just and convenient to make an order in all the circumstances of the case;

(aba) where the Tribunal is satisfied-
That unreasonable variable administration charges have been; and
That it is just and convenient to make an order in all the circumstances of the case made, or are proposed or likely to be made,

(abb) where the tribunal is satisfied-

(i) That there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and

(ii) That it is just and convenient to make the order in all the circumstances of the case;]

(ac) where [the tribunal] is satisfied-

(i) that [any relevant person] has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

(ii) that it is just and convenient to make the order in all the circumstances of the case;] or

(b) where [the tribunal] is satisfied that other circumstances exist which make it just and convenient for the order to be made.

21. Certain of the words and phrases are explained or expanded upon in subsequent subsections of section 24 of the 1987 Act. Later subsections address the extent of the premises and the extent of the powers of the manager. The opening provision of section 24 of the 1987 Act enables the Tribunal to give to the manager such powers as it considers appropriate, not limited to those given to the freeholder under the Lease.

22. There is essentially what is often described as "a threshold criterion" for the making of an order that there is a breach made out, although equally there can be an order if relevant "other circumstances" have arisen, without a necessity for a breach to be found. That effectively involves the Tribunal looking backward. The breach can be only one of many alleged and can be modest. The fact of there being a breach or there being other circumstances does not mean that an order must be made, simply that one then may be made.

23. It then falls to the Tribunal to consider whether the making of an order is just and convenient. That involves rather more of the Tribunal looking forward. Several examples of factors which may support the making of an order or may support not doing so are identified in case authorities. Any specific decision must necessarily consider the interplay of any relevant

factors in the particular case. The principle of appointing a manager and the appointment of a specific proposed manager are separate issues.

24. The Tribunal has, amongst its jurisdictions, a jurisdiction to determine the payable service charges pursuant to the Landlord and Tenant Act 1985. Sections 18 and 27a, including consideration of the reasonableness of the costs incurred for which the charges are demanded, are perhaps most notable. The Tribunal has regard to, amongst other matters, the RICS Code. That would all have been relevant in the event that detailed consideration of any matters in respect of service charges had been required. The provisions and requirements need not be set out in detail in the particular circumstances.

The Inspection

25. The Tribunal inspected the Property on the day of the hearing and prior to the hearing itself. The inspection commenced at 10.00 am and concluded at 10:30 am, the last approximately ten minutes involving the Tribunal viewing the outside of the Building following the parties leaving for the hearing.

26. The Tribunal approached the Building across timber decking. That had clearly deteriorated in placed and at least two planks were unsupported or otherwise gave. The area immediately outside the door was covered by a large piece of chipboard, from which the Tribunal inferred that the decking alone may have constituted a hazard.

27. The entrance itself, being what is or looks like an old doorway, leads from the decking into Building. More specifically, there is a wholly stone (save for the roof- see below) part of the Building which includes the doorway, which the Tribunal perceives to have been an older building than at least some of the rest of the whole. There is a part of the Building which is stone to the front and rendered to the rear and which the Tribunal perceives to be newer. Nothing specific turns on those perceptions.

28. There is also mansard roofing to both parts within which there is a third floor. The windows in the relatively vertical part of that roof have been described in the documents as dormer windows and so, whilst that may initially suggest something a little different to the actual windows, the Tribunal adopts that term.

29. The roof to the solely stone part of the Building is set back from the edge of the 2nd floor by what appeared to be in the region of three feet or so and that measurement will be adopted where useful whilst accepting it to be an approximation based on what could be seen from the decking and to the side of the Building. Above the top of the 2nd floor is a parapet, rising approximately one foot above the level of a hopper leading to a downspout. (Inevitably both measurements given are imprecise It is adequately clear that behind the parapet and forming part of the one metre width is a valley gutter. That parapet extends all around the three sides of the solely stone part which are not joined to the remainder of the building.

30. The mansard roof to the part stone- part render portion of the Building in contrast extends out to the edge of the second floor and there is modern guttering attached to the exterior of that part of the Building, so quite different to the arrangement of the other part.

31. There is a steeply climbing road to the side of the stone part. The entrance to the residential flats is via a decked area accessed from that road. The entrance door is at first floor level. The ground floor flats are accessed via stairs leading down. To the corners of the ground floor are the commercial units, on the one hand a retail unit and on the other the offices of a solicitors' practice.

32. The Tribunal inspected internally the 1st Applicant's flat. The flat was tenanted. The Tribunal records its gratitude to the tenant for permitting access.

33. There was clear water staining to areas of ceiling to the tenant's bedroom. Much of that was broadly parallel lines along the edge of the ceiling and then extending into the room. That may or may not have reflected the end of plasterboard panels or similar. There was some cracking and flaking or paint to the top of the window reveal. Toward the external corner of the room there were similar broadly parallel tracks down the wall and all the way down to skirting board level. In addition, the Tribunal saw three small circles of watermarking.

34. The tenant had placed plastic sheeting to prevent water getting to furnishings. There was a bucket, a washing up bowl and paper towels on a towel by the end of the bed. One of the pairs of tracks across the ceiling extended to the light fitting in the approximate centre of the room. The end of the bed/ bucket and bowl and so on was essentially underneath that fitting.

35. In addition, there were areas of water staining to the ceiling of the kitchen/ living room. There was a distance of a few feet between the staining to the bedroom ceiling and that to the living room ceiling, such that the impression was of two separate sources of leaks (accepting that water tracks to areas of weakness and where it enters and where it is revealed are often different).

36. Towards the outer edge of the ceiling, the Tribunal saw a hatch to what the Tribunal assumes to be a void between the ceiling and either part of the floor of the flat above or- and the Tribunal considers this more likely from the distance between the parapet and the mansard roof, the flat area/ valley gutter between those elements.

37. The Tribunal also briefly went into the 2nd Applicant's flat. The 2nd Applicant had recently purchased her flat and was in the process of decorating. She pointed to what she said was or had been a small area of damp to the ceiling near to the door into the bedroom. The Tribunal can say no more about that than that there was nothing visible to it on the day.

38. There was no area on the third floor which the Tribunal was able to access and from which the Tribunal could have seen the area between the mansard roof to the third floor and the parapet.

The Hearing

39. The hearing proceeded in person, at Yeovil County Court, commencing approximately 12 noon and concluding at approximately 2pm, followed by a discussion between the Tribunal members.

40. The 1st and 3rd Applicants represented themselves the 2nd Applicant was not in attendance. They were accompanied by Ms Cooke, the 1st Applicant's managing agent. The Respondents represented themselves. Ms Finn, the Proposed Manager was also in attendance.

41. The Tribunal is grateful to all of those for their assistance in this matter.

42. The Tribunal sought clarity as to the matters in dispute. The Respondents accepted essentially what was asserted by the 1st Applicant as to the history of repair issues. They suggested that they had not been well- served by previous agents but nevertheless the problems had occurred. Neither side, it was established, took any factual dispute with the other which required determination.

43. It was also accepted on both sides that the water leak issues remain and need to be attended to. The Tribunal identifies that the causes of the issues will need to be fully identified and addressed, in combination with establishing whether there is anything which falls outside of matters chargeable as service charges (and there may well not be).

44. It was established, having been unclear from the papers, that the two-bedroomed flats pay a given percentage of the costs as service charges and the one- bedroom flats a different percentage. A percentage is also charged in relation to the commercial premises. The Respondents explained that they took account of the commercial nature of the premises but also the fact that various services, such as cleaning of communal areas, were not relevant to the commercial premises. The commercial premises do not have access through the communal areas of the residential parts. The Respondents had set a single overall percentage of the overall service costs to be paid by the commercial lessee.

45. The Tribunal explained the essence of the law set out above, including that most bases for appointment provided for in the Act involved a threshold being crossed and then the Tribunal deciding the appointment to be just and convenient but that, as set out as the last provision in the statutory provisions above, the Tribunal could also find that other circumstances rendered an appointment just and convenient, without the necessity for fault to be determined. Hence ultimately the question of what was just and convenient was key.

46. The Tribunal noted that there were distinct differences between the role of a Manager and a managing agent, most notably that a Manager would manage the Building, taking the approach considered appropriate and not on the basis of instructions being required. In contrast an agent would need to follow the instructions of its principal.

47. The Respondents informed the Tribunal that they would agree to the appointment of Ms Finn as the Manager and stated that they felt badly served by their managing agent. Effectively that agreement was on the basis that there were circumstances which made that just and convenient. Whilst it is not directly relevant, it merits noting that meant that the owners of the eight of the flats who had taken any active part in the proceedings were agreeable. The other third of flat owners and the lessee of the two commercial units, so overall a minority, had not opposed the appointment and had not participated at all.

48. The Tribunal was mindful that any appointment of a manager impacts on the property rights of the freeholder, management company or similar which is otherwise able to manage the given property. However, as the freeholders were agreeable to relinquishing those insofar as relevant to the appointment of a manager, the Tribunal was content that should not prevent an appointment if otherwise considered appropriate.

49. The Tribunal determined that it was appropriate to appoint a Manager for the Property in light of the need to address the ongoing water leaks, to ensure clarity as to responsibility for management and more generally because it was just and convenient.

50. Given that the question of whether the Proposed Manager is suitable is one for the Tribunal to answer and not a matter for the parties, the Tribunal needed to decide whether it was content to appoint Ms Finn. The Tribunal therefore required Ms Finn to give evidence and asked her about various matters in order to establish whether it considered her appointment to be appropriate. There cannot be an order appointing a manager simply by the consent of the parties because the Manager appointed is answerable in the first instance to the Tribunal. The Tribunal must satisfy itself that the Proposed Manager is suitable.

51. The Tribunal spent some time in asking questions of Ms Finn and particularly seeking to identify her experience and suitability, including her understanding of the role of a Manager. It does not seek to record all questions asked and answers given. The more significant matters are, however, set out below.

52. The Tribunal understood that Ms Finn had inspected the Property in late 2024. She had provided a Management Plan. That is a positive. The parties were agreeable to her appointment. That is a large positive. Whilst a manager is empowered to act irrespective of the agreement of the parties, it is far preferable for a manager to command support.

53. Ms Finn explained that she is an affiliate member of The Property Institute (which now incorporates ARMA and IRPM), an appropriate professional body, and is working towards a formal qualification. In addition, she holds an ARLA accreditation and is a member of Propertymark and the National Residential Landlord's Association. Ms Finn does not currently hold any formal qualification in block management, which the Tribunal would ordinarily look for. However, in this instance, the Tribunal is content that is not an undue concern.

54. Ms Finn has specialised in the management of blocks of flats since 2013 and is the Director of Firefly Property Limited. That company was established four years ago and is based in Frome. There are only two other employees, but both are also property managers, including with experience of management of commercial premises. Ms Finn explained about the other blocks and properties managed by the company, although only one currently is mixed- use, and expressed herself content that the effective management of the Property could be achieved balanced with other commitments.

55. Ms Finn had professional indemnity insurance- although see below- had a suitable complaints procedure and there was indicated to be appropriate client money protection. She had produced a suitable management plan. The timetable and handover plan appeared sensible. The Tribunal was content that Ms Finn had carefully considered the Property and the issues. Ms Finn presented as very professional.

56. The Tribunal noted that Ms Finn had not been appointed by the Tribunal as a Manager before and would therefore find herself in a different position to that which she is used to. That said, the same applies to any first- time appointee as a manager and if any such person were not accepted as a manager for that reason, almost no appointment would ever be made. The more relevant question was therefore whether Ms Finn appeared likely to be able to get to grips with the different role.

57. The Tribunal was satisfied that Ms Finn had taken steps to identify the nature of the role and was able to address the differences between the role of a managing agent and being the Manager. The Tribunal bore in mind that the Management Plan presented the position reflecting the information provided to Ms Finn from the 1st Applicant. However, Ms Finn indicted an understanding that she must act independently of the parties, which indeed she must and stated she understood the need to be impartial.

58. Ms Finn also correctly identified in response to an enquiry by Mr Ingle that she could not manage lettings for the Respondents whilst undertaking the role as Manager as that would create a conflict of interest.

59. The proposal of her by the Applicants ceases to be relevant on her appointment, when she acts in the best interest of the Property irrespective of who proposed her. It is of course important to a manager to communicate with the parties that they will hopefully be carried with her, understanding her purpose to be the best interests of the Property and so

similarly what should be the best for the lessees themselves. The Tribunal explored how Ms Finn might address matters if parties were unhappy with decisions she considered appropriate and was content with the answers.

60. The Tribunal noted the fee proposed by Ms Finn of £6000 per year. Given the number of properties involved, that is a significant expenses per property per year (fourteen including the two commercial leases) and somewhat beyond the usual fees per flat (or other property) of a managing agent. However, the Tribunal also carefully noted that Ms Finn explained that she anticipated spending more time than usually allowed for, which the Tribunal considered sensible, and that she had set that fee to include any fees in relation to major works and that she would usually charge a fee of 10% of the value of such major works.

61. There is nothing at all unusual about that percentage fee for such works. Given the need for major works to address the water leaks- and quite possibly the decking repairs/ potential replacement (whether with further decking or another surface)- the Tribunal identified that such a 10% fee, or more than one, would otherwise be almost inevitable. The Tribunal was content with the proposed fee in those circumstances. The Tribunal noted Ms Finn's understanding of the section 20 process from the explanation she gave.

62. Ms Finn explained that the fee would be reduced to £3600 per annum after a period of eighteen months to two years, which the Tribunal understood to mean once the initial matters had been attended to and the major works completed (and so the reason for charging the higher fee had ceased to apply).

63. The Tribunal was satisfied that Ms Finn was able to address the differences between the role of a managing agent and being the Manager.

64. The Tribunal identified that the professional indemnity insurance information provided related to insurance for the company and for the sum of up to £1million. Ms Finn explained that she had extended that to £2million. The cover did not currently include a situation of appointment as a Tribunal- appointed manager, although that was understandable- there would be no reason to hold that cover in the absence of also holding an appointment to which the cover would relate. Ms Finn explained that she would contact her insurers about that on the basis of her appointment being agreed.

65. With the advantage of a short break to consider whether any further matters required clarification- which they did and the hearing then addressed- the Tribunal was able to discuss matters initially and agree that it was content to appoint a Manager and for that to be Ms Finn.

66. The Tribunal was therefore able in the hearing to inform the parties that it was content to appoint Ms Finn, as Manager, provided that she could arrange for insurance cover to be extended. That is to say, providing cover for her to be the Manager.

67. The short period of hearing following the break, firstly involved seeking to address the status of FTCML. The Applicant had queried that in her case and Ms Finn had referred to it in her Management Plan, identifying uncertainty as to its role, if any. It was established that whilst each property carried with it share in FTCML as if it were a vehicle for the lessees to own the freehold and manage the Property and the company had apparently been set- up by the lawyers at the outset, there was nothing which identified that FTCML had any role to play in management of the Property or any other interest in the Property. It was not a party to the Lease, it was not identifiably a right- to- manage company set up to acquire that right and it.

68. The company had effectively been used as an agent of the Respondents. Mr Ingle explained that a bank account had been opened in the name of FTCML and that previous agents had run the finances through that. As to whether the account still existed was unclear but Mr Ingle said there was certainly no money in that if it did still exist. The contract with BNS appeared to be entered into by FTCML. However, it was not apparent that had been a deliberate approach by the Respondent or that there had been in practice been much other than confusion between the Respondents themselves and Mr Bannister being the director of the company. That feeds into the appointment of a Manager being appropriate in order to ensure clarity.

69. The Tribunal did identify to the parties that during the term of the Order, there needs to be some action taken in respect of FTCML. At first blush, that might either by its use as a proper vehicle for management of the Property through its members and with it being given appropriate status to be able to manage or alternatively by its cessation if its existence will do nothing other than cause confusion. However, the Tribunal accepts that is, at least for present purposes, a matter for the parties and not one for the Tribunal.

70. The Tribunal also explained about the need for an order to be produced.

71. It was established that the parties were in possession of the template draft order issued by the Tribunal. The 1st Applicant explained that she returned a draft with her proposed additions or amendments. Unfortunately, the Tribunal had not been provided with that in advance of the hearing.

72. The Tribunal was able to find the document in the Tribunal's system but there was not the opportunity to consider it without detaining the parties for some while. On balance, the Tribunal concluded that it would consider that following the hearing and take account of the suggestions of the 1st Applicant to the extent it considered appropriate. None of the other attendees had any comments on the template draft.

73. In those circumstances, the Tribunal does not seek to make findings about the parties' case as a whole and does not consider it helpful to set out those cases. It is largely sufficient to identify that the Tribunal noted there to be

matters in respect of water leaks which it is agreed need to be resolved and that the position in terms of management has been somewhat confused in terms of the Respondent freeholders and FTCML.

74. The Tribunal does make a finding about one matter, which is that work is required to the decking area which leads to the entrance to the communal areas of the Building. The Applicants asserted work to be required and the Respondents had not disputed that. It was apparent from the inspection that there are at least two areas of unstable decking in addition to the area by the entrance door where is has been felt necessary lack a large piece of chipboard, although that appeared to be affected to an extent by the elements itself. The Tribunal finds that the decking requires repair if that is practicable or might, if the condition is considered to render it necessary on investigation, need to be replaced with new decking or an alternative surface. The Tribunal notes that at least a partial consultation pursuant to section 20 has been undertaken- the Tribunal is uncertain whether that was completed but considers that can be established as required.

75. Against that background and in light of the agreement between the parties, the Tribunal determines that it is just and equitable for a Manager to be appointed and for that Manager to be Ms Finn.

Consideration of an appointment and the Order

76. Ms Finn has subsequently provided to the Tribunal evidence in respect of insurance as required. The Tribunal records that there is now confirmation of cover for her appointment as the Manager.

77. As that was the only matter to address in terms of her appointment, it necessarily follows that the Tribunal remains not only of the view that the appointment of the Manager is just and convenient but also that the Manager should be Ms Finn.

78. The commencement date appropriate was not as simple an issue as ideally it might have been.

79. The financial year operated has been 1st April to 31st March (much as that appears to be simply practice rather than based specifically on the Lease terms). 1st April 2025 was only a few days after the hearing. It would in principle be the ideal date on which the Order would commence.

80. However, this Decision needed to be drafted. So too the Order. Equally, Ms Finn needed to resolve her insurance before it could be known that the Tribunal would be able to appoint her and attend to those documents. It was never realistic for those matters to be addressed and the period of the Order commence on 1st April 2025.

81. Consequently, the Tribunal determined a need to delay the start date a little to enable matters to all be in hand and allowed a period of two weeks. The Tribunal did so mindful that it remains sensible to have the financial year end on 31st March, given that is the date which has been operated and

which it is simplest to continue and much as it is not at least clearly a date provided for in the Lease. Hence at such time as the appointment ends, the management can continue using the financial year the active parties and other owners are used to. The Tribunal considers that is best in the mid to long term.

82. That approach does mean a less than perfect short term. The first period to 31st March 2026 will be a little less than a year. However, the Tribunal considered that accounting should be from 15th April 2025 to 31st March 2026.

83. The Tribunal considered that the logical approach would be to extend the 2024 to 2025 year slightly to an end date of 14th April 2025 to avoid any gap. There cannot be such a gap.

84. It is illogical for there to be a period of only two weeks, 1st April to 14th April, for which accounts are prepared by or on behalf of the freeholder. That would produce unnecessary expense and so cost to the individual owners to whom demands can be issued. Hence a pragmatic slight extension of an accounting year appears to the Tribunal the obvious logical step.

85. There was similarly no logic to the freeholders and their agents seeking to collect in any sums for such a period. It was not clear whether any demands had been served for the 2025 to 2026 service charge year, much as in principle the Tribunal perceived that ones would be expected to have been served in order that the first payment on account due 29th March 2025 would have been facilitated.

86. The Tribunal takes it as read that Ms Finn should demand the sum for the 2025 to 2026 year that she considers appropriate for the steps required to be taken, including works but inevitably cannot do so such that the first payment on account is payable 29th March 2025. It will be seen that in the Order, provision has therefore been made for her to be able to demand the first payment on account as soon as she has the information from the Respondents and their agents to enable her to do so.

87. The Tribunal makes clear that it is entirely appropriate for that to include a sum to be set towards the necessary works to the Property, much as the amount required for those works and so the amount payable for each flat or commercial premise as service charges cannot be known until any consultation is complete and/ or otherwise the cost is identifiable from appropriate quotes.

88. There has in the event been an additional complication since the hearing. A draft Management Order was provided to the parties and it was anticipated that comments would be provided on that, even if only to say that the parties had nothing to add. There were some gaps in which other fees needed to be inserted. It appears that Ms Finn supplied those but that was not identified or otherwise her email went astray and hence the Order was not completed when intended.

89. Hence only on 30th April was it clarified that the draft Order was agreed by the parties and the additional fee information could be included. That created the issue of whether the Order could be backdated to a date before the Order were made.

90. The Tribunal has concluded that the start date was discussed and agreed in the hearing and it was stated that an Order would be made commencing on that date. In effect that was the Order, much as the specific terms were required to be perfected.

91. In addition, it has been said in subsequent correspondence that the parties have all worked on the basis of the Order commencing on 15th April and in practice Ms Finn has been managing the Property since that date. It would therefore be complicated and for no useful purpose for the perfected Order to commence on a different date.

92. Leaving aside any question as to whether the Order should otherwise have commenced as at the date of the perfected Order or later one, insofar as there may be any arguable backdate from the current date that could have been to 1st April and so not requiring the previous accounting year to be extended slightly as it turns out. However, the Tribunal considers it is too late for that now when the start date was given as 15th April and the parties have proceeded on that basis.

93. Ms Finn had worked on a period of three years of appointment, which was the term proposed by the Applicants. It was suggested by Ms Finn that two years might be workable, although that was not her preference. The Tribunal did not consider that to be more appropriate.

94. Whilst not covered above, in practice there was some brief discussion of the term during the hearing. No other potential time periods were mentioned. It will inevitably take Ms Finn time to get on top of the position and organise progress, although it is to be hoped in light of the ongoing leaks that can be as soon as practicable. Funds will have to be collected in. Investigations, any consultation progress and the undertaking of works will all take some time. The desirability of the leaks being attended to without delay- including naturally the works required to avoid them continuing and recurring- does not mean that the process of properly attending to them will necessarily be swift. It may take some time.

95. Although the Tribunal is mindful of the interference with the Respondents' property rights arising from the appointment of the Manager, the Tribunal considers that it is just and convenient for there to be a period following apparent completion of required works to enable it to be established that the works have been successful and matters are settled down generally and for there then to be a period without change of management. Two years would, the Tribunal considers, be too short a time period to be confident of achieving that and may prompt the need for an extension, with additional time and expense. Three years in contrast should give sufficient time.

96. The Tribunal therefore determines that the appropriate period is one of three years, subject to the fact that it will be slightly less in practice in light of the slight delay to the start date.

97. More generally, the Management Order has been produced on the basis of the template sent to the parties but as amended to take account of the other matters than those identified above as relevant by the Tribunal. It is not necessary to repeat the terms of the Order at length here.

98. It does merit identifying that the Tribunal considered the comments of the 1st Applicant on the draft order. Those have been incorporated where considered appropriate, but some matters have not been considered appropriate for incorporation.

99. For example, any work appropriate for the rectification of the interior of Flat 7 may or may not be appropriately chargeable to the other lessees as service charges. In the first instance, the Manager will need to consider that. It is not appropriate for the Tribunal to arguably pre- judge any application which may be made to it in respect of such charges being payable. The outcome of investigations not yet undertaken inevitably cannot be known. There may or may not be more appropriate remedies for the 1st Applicant to seek.

100. Further, the Tribunal does not seek to make any determination as to whether the Respondents have previously sought to charge for any major works undertaken without consultation- where the maximum service charges payable would be £250 by each of the residential flat lessees unless dispensation from consultation is sought and granted. In the event that any application is made in respect of the service charges payable in respect of any such works or is made for dispensation from consultation, the Tribunal will need to determine such an application. Save for fact that the outcome of an application might impact by way of service charge sums collected needing to be returned and there might be an impact on the Manager obliquely at that time, the matter is not relevant to the appointment and is not relevant to the terms of the Order.

101. Ms Finn shall note the two paragraphs immediately above, having made references in her Management Plan.

Decision in respect of the appointment of a Manager

102. The Tribunal grants the application for the appointment of a manager on the basis that circumstances exist which make it just and convenient for the order to be made.

103. The Tribunal appoints Ms Tarragon Finn of Firefly Property Limited as the Manager of the Property commencing on 15th April 2025 and for the period up to and including 31st March 2028, subject to any extension of the term of the appointment prior to its expiry.

Applications in respect of costs and refund of fees

104. As referred to above, an application was made by the Applicant that any costs incurred in connection with proceedings before the Tribunal should not be included in the amount of any service charge payable by the tenant pursuant to section 20C of the Landlord and Tenant Act 1985. The Tribunal understands that the matters set out in paragraph 8 above were provided by way of explanation as to why the Applicant considered it appropriate to apply for the appointment of a Manager and why consequently any costs of the Respondent ought not to be recoverable as service charges against the Applicant.

105. The Tribunal is given a wide discretion to do that which it considers just and equitable in all the relevant circumstances. Whilst there is caselaw in respect of general principles, in practice much will depend on the specific circumstances of the particular case.

106. The Tribunal considers it to be just and equitable to grant the application in light of the Applicants' success in this matter and in light of the wider circumstances. The first element alone is not determinative, although it is never irrelevant. The Tribunal will always bear in mind the potential practical and financial consequences of the approach taken, but that is only one of a number of relevant considerations.

107. There was no corresponding application made by the Applicant pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. The Tribunal did not invite one and does not consider it necessary to now do so. That is a matter for the Applicants, who may or may not wish to separately apply. The effect of such an application being made and succeeding would be that costs of the litigation would not be recoverable as administration charges, assuming that the Lease would enable them to be in these proceedings in the absence of them being disallowed.

108. The test is not exactly the same as it is for the section 20C application, the wording of the two provisions being slightly different. However, for practical purposes the considerations are so closely aligned that the outcome of one is invariably the same as the other. Given the Tribunal's experience of deciding applications made pursuant to paragraph 5A and the clear outcome of the section 20C application, the Tribunal is confident that if a paragraph 5A application had been made, the outcome would be the same.

RIGHTS OF APPEAL

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.

3. 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.

4. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.