FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AT/LAM/2024/0031**
Property	**:**	**Lancaster House, Borough Road, Isleworth TW7 5FJ**
Applicants	**:**	**Amr Mashal and Hafsah Mirza**
Representative	**:**	**Dilan Deeljur of Counsel instructed by Connaught Law**
Respondent	**:**	**Lancaster House RTM Company Limited**
Representative	**:**	**Dennis Harper, director of HMS Property (Respondent's managing agents)**
Type of application	**:**	**Appointment of Manager**
Tribunal members	**:**	**Judge P Korn** **Mr R Waterhouse FRICS** **Mr J Francis**
Hearing	**:**	**7 and 8 January 2025**
Date of decision	**:**	**6 February 2025**

DECISION

Description of hearing

The hearing was a face-to-face hearing.

Decisions of the tribunal

(A) The application for the appointment of a manager is refused.

(B) The Applicants' cost applications are also refused.

Background

1. The Applicants seek an order appointing Mr James Lee of London Management as manager of the Property under section 24 of the Landlord and Tenant Act 1987 ("**the Act**"). A preliminary notice under section 22 of the 1987 Act (a "**Section 22 Notice**") was served on the Respondent on 14 June 2024. The Respondent does not take issue with the validity of the Section 22 Notice.

2. Lancaster House is part of a development which includes communal land and a block known as George Little House. Lancaster House itself is a converted Victorian school, with the conversion having been carried out between 2006 and 2008 by Jasper Homes Limited.

3. In or around 2017/18, a group of leaseholders from Lancaster House (the "**Property**") formed the Lancaster House RTM Company Limited (the "**Respondent**"). This company assumed control of the management of the Property in 2018. On 1 October 2020 HMS Property Management Services Ltd ("**HMS**") was appointed by the Respondent as its new managing agent and corporate company secretary.

4. The Property is a block comprising 74 flats. The Applicants are the joint sub-tenants of Flat 41, the sub-tenancy having been put in place to enable the Applicants to enter into a 'shariah compliant' mortgage. The relevant parts of section 59 of the Act state as follows:

   (1) In this Act "lease" and "tenancy" have the same meaning; and both expressions include … a sub-lease or sub-tenancy …

   (2) The expressions "landlord" and "tenant" … shall be construed accordingly.

5. It was accepted by the tribunal prior to, and again at the start of, the hearing that by virtue of section 59 of the Act the Applicants came within the meaning of "tenant" in section 21(1) of the Act and were therefore entitled to apply for an order under section 24 of the Act appointing a manager to act in relation to the Property. Mr Harper for the Respondent confirmed that the Respondent accepted this point.

Applicants' case

6. The Applicants have not provided a statement of case, but Mr Mashal has given a written witness statement. This raises various points in support of the application which will be summarised below.

7. Mr Mashal states that as a resident of the building he has the right to be informed about how decisions are made and who is involved in making them. However, he adds that each time he has requested information from the Respondent his requests have been dismissed. He has also never been invited to attend any Annual General Meetings prior to the one held in early 2024 which only occurred after his legal representatives sent a letter to HMS and to the Respondent. He argues that as a leaseholder he has the right to participate in these meetings to voice his concerns and contribute to the effective management of the building. He adds that the Respondent has consistently failed to involve other leaseholders in decision-making (i.e. leaseholders other than board members) and that the views and requests of those leaseholders are disregarded, with the board making decisions that primarily serve their own interests rather than fulfilling their duty to act in the best interests of all residents. Furthermore, he states, there are no minutes available for any of these meetings. In addition, he expresses the view that not all directors have been equally involved in decision-making.

8. He complains of unreasonable service charges, stating that the Respondent's imposition of excessive service charges, without transparency or justification, violates its duty to provide a clear breakdown of how funds are allocated. He states that despite his repeated requests for information, the Respondent has failed to provide an adequate explanation.

9. In his submission the Respondent has failed to address the damage caused by a leak in the Applicants' flat. Prior to his purchasing the flat, his surveyor identified the leak, and he was informed that the issue had been reported to HMS with assurances that it would be resolved. However, the problem persisted for months, allowing the water damage to worsen without any further action being taken.

10. He states that HMS rarely conducts a tender process for works. Most of the work is carried out by a single contractor regardless of whether this serves the best interests of the leaseholders in the long term. HMS also fail to properly supervise the work being done, leading to poor workmanship throughout the building, including damage to the exterior windows.

11. He adds that the erection of excess scaffolding around the Property has been a major issue, causing not only an eyesore but also leading to significant concerns about the lack of actual workmanship taking place once the scaffolding is up. The prolonged presence of this scaffolding has, he states, led to frustration among residents and poses a risk of negatively impacting property values in the area.

12. He states that the Respondent has repeatedly shown preferential treatment to certain individuals, benefiting select leaseholders while ignoring the rights of others. For example, the existence of the visitor parking bay was never disclosed or communicated to all leaseholders

and yet certain leaseholders have been using it. The Respondent also consistently makes decisions that clearly favour its own directors, such as the decision to relocate the bin store without consultation with leaseholders. He submits that the bin store relocation plan would eliminate the visitor's parking bay, prevent the installation of much-needed EV chargers, and result in foul odours and an increase in flies and an unsightly appearance near his section of the building. Mr Mashal also complains about the alleged reassignment of parking bays to benefit Mr Imran Dar, one of the Respondent's directors, at the expense of other leaseholders.

13. Mr Mashal expresses concern about a lack of proper security for the west car park, where he says that antisocial behaviour has become increasingly common. He also states that the Respondent has failed to keep its word as it has repeatedly promised to redecorate the communal areas of the building in the Applicants' section but has not done so to date.

14. In relation to the cladding, the Respondent has *"put residents' lives at risk through reckless decision-making and a failure to act in the best interests of the community"*. He states that it was revealed that the cladding on the building does not meet safety standards and that he and others are "alarmed" by the Respondent's *"mishandling of such a critical safety issue"*.

15. He adds that a significant portion of the tower was damaged following a storm, prompting an insurance claim, but that the Respondent accepted a settlement that only covered the repair of the damaged section, neglecting the rest of the tower, which he says calls into question its judgement and commitment to safety. Also, the Respondent's severe delays in appointing a contractor to address the issue have prolonged the situation.

16. Mr Mashal also refers to what he describes as lying and deception by the Respondent in relation to the visitor parking bays and its *"dishonest behaviour"* in repeatedly refusing to comply with numerous GDPR requests for personal information.

17. In relation to the directors, Mr Mashal states that the conduct of certain directors has been nothing short of harassment. Ms Dolacinska, a director, has referred to leaseholders as thugs and spread false rumours that he was responsible for erasing CCTV footage, and she has repeatedly targeted his family, frequently inspecting their deliveries and photographing parcels, as well as screaming throughout the day and banging on the floor all night. Mr Imran Dar, a director, has also harassed Mr Mashal and his family, repeatedly calling the police whenever he sees them in the car park, without any valid reason. On multiple occasions, Mr Dar has insulted Mr Mashal's wife and children, making inappropriate comments about her appearance and clothing. He has also contacted Mr Mashal's mortgage provider to make what Mr Mashal characterises as false accusations.

18. He states that Mr Dar is frequently seen in the car park making threats toward residents' children if they continue playing outside, and on one occasion his actions escalated to the point where a concerned parent reported him to the police. Mr Dar was also granted special permission to park on the double yellow lines in front of the Applicants' flat. Despite Mr Mashal's requests for the car to be removed, no action was taken even after the car was involved in an accident and began leaking oil, with glass shards scattered around. Then when Mr Mashal's in-laws were staying in Flat 60 during the renovation of their property Mr Dar physically attacked Mr Mashal and his father-in-law in the car park. He then proceeded to erase the CCTV footage, and the Respondent falsely portrayed Mr Dar as the victim and Mr Mashal and his father-in-law as the perpetrators and then used these accusations to prevent the landlord from renewing the tenancy. Since the escalation of this issue to solicitors, HMS and the Respondent have threatened to forfeit the lease for the Applicants' flat. This has led to legal fees being incurred and has resulted in unnecessary expenses for all leaseholders who now have to bear the cost of these legal fees.

19. HMS and the Respondent have also decided to replace the standard locks on the gas meter cupboards with locks that can only be accessed by a select number of directors.

20. On 27 August 2024, there was an incident where there was confusion over the rights to a parking bay (bay 42). An individual had parked their vehicle in the bay, and instead of following the legal procedure the Respondent hastily called a removal agent to tow the vehicle away. The car belonged to an individual known to Mr Mashal who asked Mr Mashal to intervene to prevent the removal. During his attempt to stop the removal the removal agents employed excessive and dangerous force and the tow truck was moved while he was still inside the vehicle, putting his safety at risk.

21. Mr Mashal also gives an example of what he considers to be a GDPR breach. In the Respondent's communication with tenants and leaseholders regarding a car incident, it unlawfully identified the vehicle that was responsible for the wall damage and in his opinion this disclosure was intended to shame and punish the individual rather than serve any legitimate purpose.

22. He adds that another example of gross management failing came after the Applicants discovered water stains on their ceiling in early June. Ms Mirza immediately tried to contact HMS to report the leak and was promised a call back, but no call ever came. Mr Mashal then attempted to reach HMS only to be told that they were unavailable. He then contacted the leaseholder of Flat 42, Ms Dolacinska, as the leak was coming from her apartment, but she did not respond. He then received an urgent call from the leaseholders of Flat 22, who live below him, telling him to rush home as water was pouring into their flat from the ceiling. It then took numerous attempts to file an insurance claim. HMS then insisted that inspections be carried out by Reyvis Property

Services, claiming that this was a requirement of the insurers. After the leak, an email was mistakenly copied to him by Mr Harper, and in that email Mr Harper stated his goal to be to "create problems" for Mr Mashal and to "stall the insurance claim".

23. In his skeleton argument, Mr Deeljur makes the point that the Respondent's response to this application has come mainly from its managing agents and that whilst a few of the Respondent's directors have sent emails in support of opposing the application those appear to be in their capacity of residents rather than as directors.

Respondent's response

24. The Respondent, through HMS, states that it has managed the Property extremely well since October 2020. It also notes that the Applicants are the joint leaseholders of just one flat out of 74 in total and that none of the other leaseholders have joined this application in support. The Respondent has included within the hearing bundle various items of correspondence which it says demonstrate breaches by the Applicants of their lease obligations.

25. With regard to the leak and resulting insurance claim, the Respondent states that HMS dealt with this incident on 10 June 2024 within 3 minutes of receiving a call from Mr Mashal. A loss adjuster was appointed promptly and then the insurer, via the loss adjuster, took control of the claim. With regard to the wall damage, the Respondent states that this occurred on 27 August 2024 and the insurer appointed a loss adjuster.

26. The Respondent has included service charge budgets for 2021 to 2024 and service charge accounts for 2021 to 2023 in the hearing bundle. There is also a report on the cladding issue, and the Respondent comments that the issue is complex because the Building Safety Regulator is involved but that the remediation of the Tower and penthouses is expected to be fully funded by the Cladding Safety Scheme and that it is hoped that the works can be completed within 3 to 6 months after the date of the Respondent's written statement.

27. The Respondent has provided copies of what it considers to be key correspondence with leaseholders from December 2021 onwards.

The hearing

28. Mr Mashal was given the opportunity to speak at length to explain his case. It is not appropriate to record every single thing that he said, but what follows is a summary of what are considered to be the main points.

29. As regards the payment of service charge, Mr Mashal said that he initially withheld payment of service charges due to his various concerns but then he paid under protest. He was asked about his claim that the service charges were unreasonable but was unable to

substantiate this claim. Regarding the bin store issue, he felt that the decision to move the bin store was detrimental to him and he was aggrieved at the lack of consultation.

30. In relation to the car parking issues, Mr Mashal said that HMS had not been transparent regarding the availability for use of the visitor parking space and was concerned that Mr Dar appeared to have been given favourable treatment by being allowed to leave his car on a double yellow line for two months. He also felt that he had been labelled as a troublemaker by HMS once he had complained about the bin store and said that he did not receive responses to various concerns subsequently raised by him.

31. Mr Mashal referred the tribunal to copy emails of support which he said had come from other leaseholders. All of these emails were redacted, and he accepted that it was therefore unclear who had sent them, but he said that other leaseholders with concerns were afraid to reveal their identity.

32. Mr Mashal also referred the tribunal to a long letter of complaint to the Respondent from his solicitors to which they had not received a response. In addition he referred the tribunal to an email from Mr Harper dated 23 June 2024 which had clearly been sent to Mr Mashal by accident and which stated *"He [Mr Mashal] has had legal advice. We will not acknowledge it - we will only deal with the bank. We will chat with Steele Raymond but I would like to return it to the bank - he had not paid it prior to the insurance claim and we may want to go for forfeiture via Dewstar - of course that will never happen but we have to create problems for him. We want to stall the insurance claim"*.

33. Mr Mashal also referred the tribunal to an email also dated 23 June 2024 from Mr Dar to the Applicants' landlord complaining about Mr Mashal's conduct, commenting that Mr Dar's complaints had been fabricated and that Mr Dar had been trying to intimidate him into vacating. He also mentioned the Respondent's unwillingness to allow a tenancy agreement in relation to Flat 60 in favour of members of the Applicants' family, citing this as another example of victimisation of him and his family. In addition, he showed the tribunal certain WhatsApp messages and referred the tribunal to conversations recorded on video that he regarded as inappropriate. He also complained about HMS objecting to the Applicants keeping more than one cat in their flat and felt that they were being discriminated against.

34. Although this issue does not seem to have been covered by his witness statement, Mr Mashal also complained about a charge of £17,000 by way of legal fees in connection with alleged breaches of covenant by the Applicants, but he denied that there had been any breaches.

35. Mr Harper for the Respondent said that the management of the Property was running very smoothly until early 2024 when the

Respondent complained to the Applicants' landlord that the Applicants were in breach of their lease. In relation to the cladding issue, Mr Harper said that the Respondent was expecting to be awarded a grant for the necessary work.

36. Regarding Mr Mashal's complaints that he had not been invited to annual general meetings, Mr Harper said that whilst the Applicants had been treated as leaseholders (contrary to Mr Mashal's view) they were not members of the RTM company. As for the bin store, Mr Harper said that this issue arose well before HMS were appointed but that once appointed HMS explained the issue to all leaseholders, including the fact that planning permission was needed before any relocation could occur. It was felt that it would be sensible to move the bin store to the periphery, but the Respondent was working with the freeholder and no final decision had been taken. The bin store issue was then put on hold in order to deal with the more pressing cladding issue. He accepted that in its current location the bin store was near to Mr Dar and that he stood to gain from its being moved, but he had not just been dealing with Mr Dar in trying to resolve the bin store issue – he had been liaising with the board of directors as a whole.

37. Mr Harper accepted that his email of 23 June 2024 did not reflect well on him, but he said that he was just expressing his anger because of Mr Mashal's own behaviour, including blocking Mr Harper's car in for several hours because of Mr Mashal's own anger in connection with a specific incident. Regarding the allegation that by objecting to the Applicants having more than one cat HMS were picking on them, Mr Harper denied this and said that other leaseholders' breaches of covenant were also enforced and that there was a genuine safety concern about cats running around in the internal common parts.

38. Mr Harper accepted that there were no minutes of meetings, saying that decisions were instead taken and recorded by exchange of emails, and he accepted that prior to 2024 the previous annual general meeting of members had been held in 2020.

39. Regarding the long letter of complaint from the Applicants' solicitors, Mr Harper's said that he had acknowledged it by email but accepted that he had not provided a substantive response. His explanation was that there was a lot going on at that time and he prioritised dealing with the individual issues.

40. In relation to what Mr Mashal had characterised as the visitor parking space, Mr Harper said that there was no mention in any of the leases of there being a visitor parking space; there just happened to be a spare space. As to whether Mr Dar had that space re-assigned to him and, if so, whether that was fair, Mr Harper said that this decision would not have been made by the Respondent but rather by the freeholder.

41. Mr Deeljur for the Applicants put it to Mr Harper that Mr Mashal had reported to HMS in 2021 that water was leaking from a downpipe. Mr

Harper accepted this and said that HMS had then dealt with the issue immediately. Mr Deeljur also put it to Mr Harper that there had been no communal redecoration since 2021; Mr Harper agreed and said that this was because there were insufficient funds in place.

42. Mr Deeljur also asked Mr Harper whether he had any evidence to support his written witness statement to the police dated 28 October 2024 in which he stated that *"HMS, its employees and the Directors of Lancaster House RTM Company Limited believe that Mr Mashal may be involved in an illegal scheme where vehicles, possibly stolen, are stored in residential car parks such as that at the Lancaster House development until they can be sold for monetary profit"*. In response, Mr Harper pointed out that he had only stated "may" be involved, but he conceded that he did not have any supporting evidence.

Proposed manager

43. The proposed manager attended the hearing and was asked questions by Mr Harper on behalf of the Respondent and also by the tribunal.

Closing submissions at hearing

Applicants' closing submissions

44. Mr Deeljur said that the behaviour on which the Applicants were relying in support of their application was (i) a failure to evidence decision-making regarding the bin relocation and Mr Dar's use of the extra parking space, (ii) conflicts of interest leading to unfair decisions such as allowing Mr Dar to park on a double-yellow line, (iii) a failure to communicate with leaseholders generally, (iv) a failure to deal with maintenance/disrepair, (v) a failure to assist the Applicants with their insurance claim or even an active attempt to delay it, (vi) a delay in dealing with the cladding issue, (vii) a failure to redecorate, (viii) harassment of Mr Mashal and his family and (ix) excessive legal fees.

45. Mr Deeljur said that HMS had treated the Applicants and their family unfairly and had not made much effort in relation to these proceedings in that there were no witness statements or written explanations from the Respondent's directors nor was there any written evidence of resolutions passed.

46. In relation to the bin store, the Applicants believed that the driver for the wish to relocate it was the fact that two of the Respondent's directors wanted to be further away from the smell. There was no evidence of a fair and proper decision-making process having taken place, and this was also the case with the parking space and illegal parking issues. As regards communication, there had been no substantive communication with the Applicants since December 2023.

47. The Respondent had failed to deal properly with maintenance and damp issues, including with the insurance claim arising out of the leak. Specifically on the insurance claim, the claim for the flat below that of

the Applicants had been dealt with but the Applicants' claim had not. The Respondent had also failed to deal promptly with the cladding issue through delays by HMS in submitting proper applications as the relevant fund opened for applications in November 2022, but the Respondent did not apply until August 2023.

48. The actions of Mr Dar and Mr Harper's witness statements to the police both amounted in the Applicants view to harassment of them and their family. Regarding the legal costs issue, the Applicants felt that £17,000 in legal fees for what appeared to them to be just for the writing of three letters was excessive and it suggested that the imposition of such high charges was being used as a pressure tactic on Mr Mashal.

Respondent's closing submissions

49. Mr Harper accepted with the benefit of hindsight that he could have spent more time in responding the detailed points contained in the Applicants' statement of case, but he said that he was more focused on showing what HMS had actually done by way of management.

50. He reiterated that everything had been running smoothly between 2018 and March/April 2024 and that the police had confirmed that there had been no problems on the estate prior to March/April 2024. He accepted that he had become angry with Mr Mashal but said that this was in response to Mr Mashal having boxed his car in for no good reason for several hours.

51. As regards the cats, Mr Harper was adamant that they represented a trip hazard and said that other leaseholders had been treated in the same way as the Applicants when in breach of the terms of their lease. As regards the downstairs flat's insurance claim being resolved more quickly, this had nothing to do with HMS or the Respondent – both claims were handed over as quickly as possible for the insurers to deal with.

52. As for the bin relocation issue, the correspondence in the hearing bundle showed that it was quite complicated, although Mr Harper accepted that the original consultation probably could have been handled better. In relation to the spare parking space, Mr Harper's understanding was that the freeholder had allowed Mr Dar to use it on a temporary basis, but in any event the decision did not belong to the Respondent. In relation to the parking on a double-yellow line, the ultimate decision rested with Parking Control Management but HMS did ask him to move the car.

53. In relation to repair and maintenance, Mr Harper said that HMS usually deal with issues quickly, for example gutter cleaning, but that they had to be careful with how much they spent. In relation to the cladding, HMSD immediately organised reports when appointed and they started the section 20 process in mid 2021. The section 20 process then had to be re-done because the Government changed the rules. HMS then tried but failed to obtain funding from the Building Safety

Fund and then tried another fund. A package had now been submitted to the Cladding Safety Scheme for funding. So in his submission HMS had used all reasonable efforts to resolve the cladding issue at minimal cost to leaseholders.

54. As for the complaints of harassment, the issues were between Mr Mashal and Mr Dar, and HMS had tried not to get involved. Mr Harper accepted, when asked, that it might be appropriate for Mr Dar to step down as a director given the personal conflicts that had arisen.

Tribunal's analysis

55. As noted above, the Applicants are sub-tenants but we accept that by virtue of section 59 of the Act the Applicants come within the meaning of "tenant" in section 21(1) of the Act and are therefore entitled to apply for an order under section 24 of the Act appointing a manager to act in relation to the Property.

56. Under section 22(1) of the Act, *"Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on (i) the landlord and (ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy".* We are satisfied that this sub-section has been complied with, and the Respondent has not contested this point.

57. The parts of section 24 of the Act on which, based on Mr Deeljur's skeleton argument, the Applicants seek to rely provide as follows:-

"(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 property, 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 … (a) where the tribunal is satisfied … that any relevant person is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises … and that it is just and convenient to make the order in all the circumstances of the case; (ab) where the tribunal is satisfied – (i) that unreasonable service charges have been made, or are proposed or likely to be made, and (ii) that it is just and convenient to make the order in all the circumstances of the case; … (ac) where the tribunal is satisfied – (i) that any relevant person has failed to comply with any relevant provision of a code of 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."

58. The test is therefore a twofold test; the tribunal must be satisfied that one or more of the fault-based gateways set out in section 24(2) exist and also that it is "just and convenient" to make an order for the appointment of a manager.

59. On the basis of the information provided by the Applicants, we are not satisfied that unreasonable service charges have been made as the Applicants have been unable to provide actual credible examples of unreasonable service charges. However, we accept that it is at least arguable that the Respondent has committed breaches of certain obligations owed to the Applicants as a leaseholder and also that certain other events have occurred which have caused the Applicants problems.

60. There is some credible evidence that the Applicants have not always been treated fairly. Mr Harper's email of 23 June 2024, which was inadvertently copied to Mr Mashal, suggests an antipathy to Mr Mashal which in turn was affecting the way in which Mr Harper was treating Mr Mashal. Mr Harper accepted at the hearing that the email did not reflect well on him, but he said that he was just expressing his anger because of Mr Mashal's own behaviour, including blocking his car in. Mr Harper also by his own admission failed to respond substantively to a long letter of complaint from the Applicants' solicitor.

61. As regards the Applicants' complaints about certain directors, the evidence to support the complaints in relation to Ms Dolacinska is quite thin, whereas the complaints about Mr Dar seem to have more substance. It is far from ideal that neither Mr Dar nor any other directors have given any witness statements on which they could have been cross-examined, but ultimately the arguments between Mr Dar and Mr Mashal appear largely to be personal to them and are not by themselves reflective of poor management by the Respondent. In addition, by his own admission Mr Mashal was not totally blameless himself.

62. As for the issues relating to the bin store, visitor parking and illegal parking, having seen and heard both parties' evidence we are not persuaded that these show serious management failings. The bin store issue is not one on which a decision has yet been made and in any event much of the Applicants' case on this issue is based on their belief as to other people's motives without any supporting evidence. On the visitor parking and illegal parking issues, there is no real evidence that the Respondent was in control in relation to either of these issues or (even if it was in control) that it made a very poor management decision.

63. In relation to members' meetings, it is not the case that the Applicants were members of the RTM company; their landlord was a member but

that membership did not get passed down to the Applicants simply by virtue of their having been granted a sub-lease.

64. In conclusion in relation to the first limb of the test, there is limited evidence of a limited number of failings but (a) such failings are in our view relatively minor in the context of an appointment of manager application and (b) most of them are reflective of disagreements and animosity between individuals rather than evidence of wider management failings. However, we would just emphasise at this point that this does not mean that the Applicants' concerns do not matter. We accept that the Applicants are genuinely upset about various things that have happened, and we are not suggesting that they are wrong to be upset. In addition, we do have concerns about the lack of witness statements by any of the Respondent's directors on which they could have been cross-examined and about the general lack of formality in decision-making including no minutes of meeting. We are also unimpressed by what we consider to have been Mr Harper's overly dismissive approach – both in writing and at the hearing – to Mr Mashal's concerns, as well as his written witness statement to the police in which he stated – seemingly without evidence – that HMS and others believe that Mr Mashal might be involved in an illegal scheme.

65. Nevertheless, it remains the case that, in our view, the Applicants' case on the first limb of the test is limited. Furthermore, even if we were to accept that the first limb of the test has been satisfied we also need to be satisfied in respect of the second limb, namely that it is "just and convenient" for the order to be made. In relation to this second limb of the test, in our view the Applicants' submissions do not even come close to satisfying us that it would be just and convenient to make an order for the appointment of a manager in this case.

66. The application for the appointment of a manager is quite a draconian one, in that the tribunal is being asked to remove from a landlord or (in this case) an RTM company its right to manage the property in question. A tribunal should not lightly decide to remove that right from a landlord or from an RTM company.

67. In this case, whilst the Applicants claim that there are other leaseholders who are unhappy with the standard of management, there is no proper evidence before us that any of the other leaseholders are dissatisfied. There is no evidence before us of unreasonable service charge demands, and the issues in respect of which there is at least some credible evidence are mainly inter-personal issues. There is no evidence before us to support the Applicants' claim that the Respondent generally disregards the views of all leaseholders other than certain directors nor to support their general complaint about how works are undertaken. We also prefer the Respondent's evidence to that of the Applicants on the cladding and leak/insurance claim issues, and the legal fees issue has been raised seemingly as an afterthought without sufficient detail.

68. In our view, therefore, this application is misconceived. Where there is a genuine grievance about how someone has behaved there are various options open to the aggrieved party as to how to resolve the dispute and/or to seek redress. It may also be the case that certain of the Applicants' concerns would justify some reduction in management fees. However, to apply for the RTM company as a whole to be stripped of its right to manage the Property where there is no proper evidence of unremedied, ongoing serious management failings and where no other leaseholders have been shown to share the Applicants' concerns is wholly disproportionate and is not a proper basis for the tribunal to appoint a manager.

69. In conclusion, in our view there is no credible reason for concluding that it would be just and convenient to appoint a manager.

Applicants' cost applications

70. The Applicants have applied for a cost order under section 20C of the 1985 Act ("**Section 20C**") and for a cost order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**Paragraph 5A**").

71. The relevant parts of Section 20C read as follows:- *(1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier Tribunal … are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant …".* The relevant parts of Paragraph 5A read as follows:-*"A tenant of a dwelling in England may apply to the relevant … tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs".*

72. The Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the landlord in connection with these proceedings cannot be added to the service charge. The Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the landlord in connection with these proceedings cannot be charged direct to the Applicant as an administration charge under his lease.

73. The Applicants' main application (i.e. the application for the appointment of a manager) has been dismissed, and we consider that the decision to make that application was misconceived. In the circumstances it would not be appropriate to make a Section 20C Order or a Paragraph 5A Order and we decline to do so.

Name: Judge P Korn **Date:** 6 February 2025

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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