FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/24UD/LAM/2024/0605
Property	:	Hamble Manor, Green Lane, Hamble le Rice, Southampton, SO31 4GB
Applicants	:	Mrs Anne Kennedy Mr Robert Cotterill Ms Anne Benson Mrs Isabelle Davison Mr Ian & Mrs Deidre McColl
Representative	:	PDC Law Mr Beetson, of Counsel
Respondent	:	Hamble Green Management Limited Mr Bowker, of Counsel
Representative	:	GH Property Management Services Ltd
Type of Application	:	Application for the appointment of a manager – S.24 Landlord and Tenant Act 1987
Tribunal Member	:	Regional Surveyor A Clist MRICS Ms C Barton MRICS Ms T Wong
Date of Hearing		3 June 2025
	:	
Date of Decision		30 September 2025

DECISION

Decision of the Tribunal

a) The Respondent had not complied with its obligations to repair the western gable wall and had failed to adhere to the 'Service Charge Residential Management Code and Additional Advice to Landlords, Leaseholders and Agents' 3rd Edition. In this regard the Tribunal is satisfied that the threshold criteria of section 24(2)(a)(i) (a) and (ac) of the Landlord and Tenant Act 1987 have been met.

b) It is not just and convenient to make an order under section 24(1) of the Landlord and Tenant Act 1987 on the grounds that a new managing agent had been appointed and some progress was emerging as to resolving matters.

c) In any event, Mr Dennis Harper is not a suitable person to be appointed as Manager of the Property. The Tribunal acknowledged that Mr Harper was an experienced managing agent with detailed knowledge of the property. The Tribunal, however, finds that Mr Harper would not be independent of the parties.

Background

1. The Applicant seeks the appointment of a manager. They nominate Mr Dennis Harper of HMS Property Management Services Limited.

2. The application contains detailed grounds relied upon. A Preliminary Notice pursuant to Section 22 of the Landlord and Tenant Act 1987 was served on 17 July 2024.

3. The Property is a converted manor house comprising six flats, and a purpose-built part consisting of eight flats, benefitting from communal gardens, parking and a swimming pool.

4. On 3 March 2025 the Applicant made a case management application to adjourn the hearing originally set down for 11 March 2025. The application was granted and the hearing adjourned.

5. The Tribunal were provided with a hearing bundle extending to 996 electronic pages. References in this determination to page numbers in either bundle are indicated as [ ].

6. These reasons address in summary form the key issues raised by the Applicant and the response of the first Respondent. The reasons do not recite each point referred to in submissions but concentrate on those issues which, in the Tribunal's view, are critical to this decision.

The Law

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."

7. 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.

8. 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.

9. 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.

10. The Tribunal has, amongst its jurisdictions, a jurisdiction to determine the service charges payable and the reasonableness of the costs incurred which those service charges are demanded to meet, pursuant to the Landlord and Tenant Act 1985. Sections 18 and 27a 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

11. The Tribunal inspected the property at 10am on 3rd June 2025. There was heavy precipitation and winds at the time of the inspection. The panel were met by Mr Jones, Mr Bowker, Mr Beetson, Matthew Lewis, Anne Kennedy, Liam O’Sullivan. Mr Jones did not accompany us throughout the inspection.

12. Mr O’Sullivan led the inspection, commencing at an entrance within the old manor house. The old manor house appeared to be arranged over three floors, with some flats having balconies. The external elevations appeared to be a combination of painted render and others with painted masonry.

13. The Tribunal viewed the hallway leading to Flats 3-8 prior to Mrs Kennedy granting access to her property, Flat 3. Mrs Kennedy led the parties to her kitchen. Mrs Kennedy showed the panel the interior of the gable wall to which she had referred to the issue of water ingress within her witness statement. The panel noted the joint of two panels of wallpaper covering had lost its adhesion to the wall adjacent to the window on the western elevation. The panel also noted some modest black mould around the uPVC frame of the window. No other evidence of damp or water ingress was noted at the time of the inspection although it was noted that the flat was well maintained internally and kept in very good order.

14. The panel further noted that there was a flat roof underneath the kitchen window to the eastern elevation. It appeared to have a modern felt covering although there was some water ponding noted.

15. Mrs Kennedy took the panel to an ensuite bathroom. The internal plaster finishing had been removed on the external wall, as had the window sills. A significant draft from the window was noted. The room was in otherwise good condition.

16. The panel were then taken externally to the garage area which was to the rear of flats 9, 10 and 13. The panel viewed the exterior of the two newer buildings, which appeared to be of circa 1960's construction and interconnected to each other and the original manor building by hallways. The newer buildings were of masonry elevations and pitched tiled roofs, arranged over two storeys although some apartments appearing to have Velux windows in the roof. The garage blocks appeared to be in relatively poor condition. The ground was surfaced with tarmacadam which whilst in reasonable condition appeared to have been laid some time ago.

17. The panel viewed the communal hallway near Flat 13. The hallway had exposed brickwork internally and timber clad ceilings. The panel viewed an external private entrance which led to the first floor of another flat.

18. The inspection continued to the area of the swimming pool which was covered at the time of the inspection. The area surrounding the pool was paved with concrete tiles, which appeared to be in reasonable condition although it was apparent that they had been in place for some considerable time. The pool area was otherwise laid to lawn and was bounded by a mix of hedgerows, masonry and decorative concrete brick walls. Mr O'Sullivan confirmed that the small outhouse adjacent to the swimming pool was a pump room. The door to the building appeared to be half open and in poor condition.

19. The grounds were landscaped and laid to lawn with a combination of paved and shingled pathways. Mr O'Sullivan explained that the car park to the rear of the swimming pool was demised to a neighbouring property but shared with Hamble Manor. The panel viewed a tree subject to a Tree Preservation Order.

20. The panel were then led to the western gable and north elevations of the old manor house. The masonry had been painted which was peeling in areas. The brickwork appeared to be in poor condition. There were penetrations for a gas flue and ventilation near a window to the first floor serving the kitchen of Flat 3. The panel noted that the situation of the gable wall and that of the adjacent building was particularly exposed to the elements.

The Hearing

21. The Hearing commenced at Havant Justice Centre at approximately midday following the inspection and was widely attended. For the Applicant, Mr Beetson of counsel, Mrs Kennedy as lead Applicant, Ms McColl and Ms Benson were present. The Applicant's nominated manager, Mr Harper was also present and accompanied by his colleague Ms Nimmo-Scott both of HMS Property Management Services Limited. For the Respondent Mr Bowker of Counsel, Mr Lewis, instructing Solicitor of Commonhold and Leasehold Experts Ltd, Mr Jones Chair of Hamble Green Management Ltd, Mr O'Sullivan managing agent from GH Property Management Services Ltd and Ms Simmonds. Also in attendance were various leaseholders and interested parties observing.

22. The Tribunal thanked Mr Bowker and Mr Beetson for their skeleton arguments, addressing the concerns of Mr Bowker regarding the length of the hearing and his proposed timetable. Mr Beetson confirmed that he was content to follow Mr Bowker's proposed timetable, although the parties had not agreed to limit the allegations as per Mr Bowker's proposed approach. As such, all allegations and grounds would be open to cross examination.

23. The Tribunal noted its concern regarding the listed length of the hearing given the extent of allegations and evidence provided in the hearing bundle. As such, the Tribunal indicated it would be content to list the hearing for a further day should the parties require the same.

24. Mr Beetson confirmed that he would call only Mrs Kennedy and Mr Harper whilst Mr Bowker would call only Mr Jones and Mr O'Sullivan. As such, counsel considered that the proposed timetable would be viable although would review throughout the course of the hearing. The Tribunal were satisfied with the suggested approach.

25. As a preliminary matter, the Tribunal wished to express their condolences to Mrs Kennedy following the bereavement of Mr Kennedy. It was explained that the Tribunal had read Mr Kennedy's witness statement and would have regard to it, although it would attach less weight than the witness evidence that would be tested throughout the course of the hearing. The Tribunal added that Mrs Kennedy was welcome to take any breaks should she need to. The Tribunal expresses its sincerest apology for causing any further distress to Mrs Kennedy in addressing the matter.

26. Mr Beetson called Mrs Kennedy. She confirmed her first and second witness statement [70]. Mr Beetson asked Mrs Kennedy the agreed supplementary question as to whether there had been any update to events since her witness statement in December 2024. Mrs Kennedy stated that the S.20 process had still not progressed, there was no specification of works. The Notice of Estimates caused her concern due to a lack of detail and the process being undertaken.

27. Mrs Kennedy stated that Mrs McColl of Flat 10 had roof above her flat repaired at the beginning of April.

28. It was said that there was ongoing concern of the finances and that no plan was in place for the future. She had discovered that previous debts had been waived with £22,500 of incurred costs for defending the hearing not recoverable from insurers.

29. Otherwise, nothing had changed at the property. Rather, things had gone back to the situation in 2021 although the gable wall was now worse. The swimming pool still leaked, the garden maintenance was poor with lessees undertaking work to the garden themselves.

30. Mr Bowker then began his cross examination.

31. Mrs Kennedy confirmed that she had entered into a loan agreement in January 2023 [510]. It was further confirmed that the purpose of the loan was to clear debts incurred from fees to four companies whilst she was a director of Hamble Green Management Limited.

32. Mrs Kennedy confirmed that she had prepared a document to brief the board between 25 February 2023 – 19 March 2023 [897-900]. Mrs Kennedy stated that she was upset as to the lack of progress and service received from legal advisors but that was not the reason why she had instructed another solicitor firm.

33. Mrs Kennedy stated that she was a director of the company as at 13 April 2023 [762]. The legal fees were said to have been putting a strain on the service charges at that point and they hadn't expected to escalate.

34. Mrs Kennedy was familiar with a document within the hearing bundle [765] whereby HMS Property Management recommended solicitors Steele Raymond as 'excellent in pursuing breaches'.

35. Mrs Kennedy was then taken to a document which she confirmed were detailed costs relating to the 2023 service charge year. Having reviewed the subsequent breakdown of legal expenses, Mrs Kennedy was unable to confirm whether 'ad hoc management fees' to HMS Property Management were outside the scope of routine property management work. She was able to confirm that fees incurred by HMS between the period of 31 January 2022 and 30 November 2023 was whilst she was a director.

36. Having reviewed paragraphs 36, 27 and 39 of Mr Jones' witness statement and a subsequent email [825], Mrs Kennedy accepted that the same related to an April 2024 survey of the gable wall. Mrs Kennedy agreed with the statement on the document that 'survey stage 1' was completed. Attention then turned to a document within the hearing bundle [313] which related to the specification of works. Mrs Kennedy said it appeared to be complete although she had only just seen the document within the bundle. She would need to read it in full.

37. Mrs Kennedy was aware that a tendering process had taken place [748] although was not sure if analysis of the same had occurred. An initial S.20 notice was received 28 February 2025. A second notice of estimates set out tenders for four companies, she believed it was received around April 2025 but was not sure. It was said to have been a short time ago. The quotations were said to range from

£22,000-£136,000 which she considered to be an eyewatering and confusing range. She believed that the period for making observations on estimates had expired.

38. Referring to the second notice of intent issued in February 2025, she believed it did relate to repairs for the gable wall.

39. It was said that Mrs Kennedy had not been asked to pay for any works to the gable wall this year. She was unsure what she had been asked to pay in service charge contribution to the nearest £1000 this year.

40. Mrs Kennedy could not say whether she had sent a series of Whatsapp messages [946], she could only go off what the text said but hadn't got the relevance behind them.

41. It was said that herself and fellow board members resigned after the EGM but it was not the next day [949].

42. With reference to a resident's parking fine [955], it was said that Mrs Kennedy was not aware of how they were dealt with online. She believed the fine had been reduced to £60 but she was not sure as never received a fine so had not dealt with the same.

43. Mrs Kennedy stood by her witness statement whereby she said that she felt she had no choice but to make the application for an appointment of manager.

44. In response to Tribunal questions, Mrs Kennedy stated that there was a small conclave and brick-built barbeque on a steep bank beyond the swimming pool to which a group of lessees had made pleasant and usable by weeding the area of bindweed and replanted with their own plants. This included some artificial silk flowers. The area is used as a meeting point for residents.

45. The current state of the garden was recent, having undergone maintenance on the Saturday prior to the hearing.

46. Mrs Kennedy clarified that the first Notice of Intent in respect of s20 consultation process was issued in July 2024. It was not possible to view the scope of the works. In October a letter was received from solicitors to state that tenders had been issued. A second notice of intent was later received form the new management agent. She asked what it was in relation to but never received an answer until after the consultation period had ended. Her understanding was now that both the first and second notice relates to the gable wall but she had not known about the north wall and others until the survey had been conducted.

47. At the conclusion of Mrs Kennedy's evidence, the hearing adjourned for a lunch break.

48. Upon return, Mr Bowker called Mr O'Sullivan as witness. Mr O'Sullivan confirmed his witness statement [739] although added that there had been a material change since. Mr O'Sullivan stated that he was now one of four directors rather than one of three directors.

49. Mr Beetson commenced with cross examination.

50. Mr O'Sullivan elaborated on a paragraph of his witness statement. It was said that he was always honest with his clients, each building is unique as are the people within it. The aim is to run the property as best can be and where possible resolve historic issues.

51. Mr O'Sullivan added that his witness statement was written in January 2025, just five months after his instruction.

52. The Tribunal questioned Mr O'Sullivan.

53. Mr O'Sullivan explained that since his appointment, together with his client directors, had put together a strategy. It was regrettable that the handover process had been protracted as there had been three managing agents in a short space of time which added some complexity to the matter. Notwithstanding, funds had improved since the service charge statements were issued.

54. It was said that the structural integrity of the building and dealing with the Improvement Notice were priorities, as was fire safety to which an assessment was completed mid-March which proposed remedial works to be undertaken.

55. Mr O'Sullivan stated that his colleagues had had more engagement with the appointed surveyors with that appointment having been made by a previous managing agent. In relation to the ongoing S.20 process, he had not dealt with the specification or tender analysis and so was unaware as to how long it had taken to receive tenders.

56. The same was said with regards to the Improvement Notice, whereby Mr O'Sullivan had little engagement personally. He stated that the deadline for compliance was July 2025. Mr O'Sullivan said that he did not know if an extension of time would be required to comply with the Improvement Notice.

57. Observations and enquiries from the S.20 process were currently in hand but it was anticipated that that they would soon be in the position to appoint a contractor.

58. With regards to the fire risk assessment, there were three principle parts to the required remedial works. Those were fire doors in the older part of the building, compartmentation works and an upgrade to emergency lighting and signage. In relation to the fire doors, Mr O'Sullivan did not know the extent of how many fire doors would need to be replaced. He was almost certain that a S.20 consultation process would be required.

59. Water storage tests had been programmed but not carried out as yet.

60. The contractor for garden maintenance was appointed by a Director. The contractor has obtained the required insurances and undertaken a risk assessment. Mr O'Sullivan was not sure how frequent he visits the property.

61. With regards to service charges, it was said that the 2023 accounts were issued at the November AGM. Mr O'Sullivan believed that handover of service charge accounts was now complete and the same was handled by an accountant. He had no concerns relating to the same and was content that the service charge accounts were balanced and up to date.

62. Mr O'Sullivan explained that there had been occasions whereby reasonable requests had been received by Lessees, but G H Property Management Services had not had the information required to meet the requests. Where such incidences occur, staff communicate with the Directors. There had been a very recent complaint received by a colleague from a Lessee but the there had been some confusion as to what the Lessee had requested.

63. Mr O'Sullivan clarified that the two S.20 Notices of Intent–that were issued related to the same works regarding investigations into damp from the gable wall. The first notice should have been more specific, so a second notice was issued providing more detail. Mr O'Sullivan added that the option for a dispensation application had been discussed but the detail of such was unknown to him.

64. With regards to parking arrangements there was no action currently being taking in relation to any breaches or disputes.

65. Mr O'Sullivan said that he was unaware when any repairs to the swimming pool would take place but that the replacement heater was planned but a date had yet to have been set. His colleagues were dealing with the matter.

66. Mr O'Sullivan explained to the panel that there was a team of over 20 people with various specialisms dealing with the property and he was unable to answer every point personally. The team were dealing with all issues but the gable wall remedial works were the priority. There were many external factors to consider such as the number of new fire doors required and the funding needed for the same.

67. It was said that Mr O'Sullivan was confident that funds would be available to cover works required at this point in time but could not say for the future. There is a good relationship with the directors of the new board and that they were working as best as they could with the Applicants. He was hopeful that matters will be resolved.

68. Mr Bowker re-examined.

69. Mr O'Sullivan said that he could not recall what the lowest tender bid was in relation to the remedial works to the gable-end wall.

70. Mr O'Sullivan stated that not all lessees were up to date with service charge payments. The sum due was approximately £6,000-7,000 from one lessee. Mr O'Sullivan confirmed that the lessee was that of Flat 3.

71. In relation to the remedial works of the gable end wall, Mr O'Sullivan stated that if a contract was taken with the lowest tenderer, in the worst case scenario the

works would commence around the end of August and in the best case scenario the beginning of July although this would depend upon the availability of the contractor.

72. Mr Beetson requested a further question following on from the chair's earlier question. Upon direction to an email dated 27 September 2025 from Deidre McColl (Flat 10) complaining that a roof leak was not urgently attended to [544], Mr O'Sullivan stated that his colleague had responded to the same on 30 September 2025 but was unable to give a timeframe for resolution as costs needed approval by the Directors.

73. Mr Bowker called Mr Jones.

74. Mr Jones confirmed his statement and signature [742].

75. Mr Beetson began his cross examination.

76. Mr Jones confirmed that he has held the position of chair of the board since January 2024, having previously been a director of the same.

77. With regards to the improvement notice dated 10th July 2024, Mr Jones said that he understood the work that needed to be carried out, adding that it ought to have been started by August 2024 and completed by November 2024. Mr Jones stated that although works had not started 'on the ground', investigations had been carried out.

78. With reference to a photographic image within the hearing bundle [292], Mr Jones confirmed that the extent of the damp and mould within Flat 1 was visible.

79. With reference to an email exchange [823] in March 2024 whereby Louise Nimmo-Scott at HMS Property Management Services Ltd urged Mr Jones to issue a Notice of Intent, Mr Jones confirmed that it was not issued until July 2024.

80. Mr Jones reconfirmed that the deadline on the statutory Improvement Notice had been missed and that the S.20 process had not commenced for another 4 months after he was requested to do so.

81. With regards to correspondence relating to water ingress from a roof to Flat 10 [601] and [539], Mr Jones stated that he had no knowledge of the issue nor that it related to Flat 10, rather that the lessee concerned occupies Flat 8. It was said that contractors had undertaken some repair work in January 2024 but had made the issue worse. In Autumn of 2024 the issue was resolved by contractors but another issue occurred shortly after.

82. Mr Jones did not consider disrepair of the western gable wall and associated areas to deem a breach in the Respondent's repairing obligation. He had been in touch with Karin Rose the Housing Enforcement Officer regarding the improvement notice and was content with the Respondent's actions. It was said that a plan for remediation had been in progress since January 2024. The previous strategy of rendering the wall was considered inappropriate as there

was condensation within the wall and so adding additional layers to the outer skim would compound the issue. The survey and proposed remediation suggested by Primmer Olds was shown to Karin Rose with which she was content.

83. With regards to the first S.20 consultation process, Mr Jones had explained that the alternative arrangements had been made for viewing the specification of works for when the former managing agents, Evolve, resigned but the process was later restarted. Mr Jones explained that after the resignation, the Respondent self-managed the property and were not in the position to carry forward the S.20 process but they continued to engage with Primmer Olds.

84. It was said that there was no reason to have applied for dispensation, it would not have sped the process up. The specification of works was received on 2 October 2024 and at that point the appropriate remediation was identified. The proposed works were very different to the previous proposed remediation. The Respondent was advised to wait until spring to carry out the works. Mr Jones disputed that there had been a flurry of activity since the earlier adjournment of this application. Primmer Olds had been advising the Respondent on the specification and tender analysis and liaising with Eastleigh Borough Council.

85. Mr Jones added that there was no specification of works that had been signed off in July 2024, he was not sure what Evolve had meant by the wording within S.20 notice [307].

86. Mr Jones said that it was not correct that there was not a date for commencement of the works, 20 May 2025 was the end of the S.20 consultation process. The Respondent had decided not to sign a contract for the works as they were awaiting the outcome of this application.

87. In reference to recommendations for fire safety [585-587], item 1 was complete and quotes were being obtained for item 2. With regards to item 3, the paint had not been tested and it was not known whether it was intumescent. Investigations were ongoing as was item 4. It was acknowledged that compartmentation was a big issue in an older property.

88. With regards to the alleged mismanagement of funds and reduction of service charge for Flat 3, Mr Jones stated that service charges were variable for each flat. The budget had previously been £50,000 in aggregate for the year but it was proposed at the EGM 24 that the money should no longer be spent on legal fees as such the budget could be reduced. The Reserve fund stood at approximately £10,000 which would be allocated to the remediation of the gable wall, service charge demands for this year would replenish the reserve fund. The service charge had been reduced to a figure that was required to run the building for that year.

89. Parking was now not an issue nor were there any requirement to introduce any parking control measures.

90. The water had not been tested and the 2022 recommendation to connect water to the mains and remove tanks was not a current priority given other works required but will action the same in the future.

91. With regards to the S.20 consultation period, the process was complete and the preferred contractor had been informed and vetted by Primmer Olds.

92. In response to the Tribunal's questions, Mr Jones stated that the gardener had been appointed six months ago and is contracted to attend on a bi-weekly basis. It was recommended by the gardener to leave the relatively grass long to help it survive over the summer months.

93. It was said that the tree subject to a preservation order did not in his opinion present safety concerns but any solution would not be lopping but rather re-locate the path. He had no direct knowledge of the gardener having trimmed the tree but said that some dead parts had been removed. Mr Jones said that the gardener worked for the local council and understood the requirement to obtain planning permission in relation to trees subject to tree preservation orders.

94. There were currently no operational issues at current with the parking arrangements, however there is a technical issue relating to parking in the garage area which the lease does not allow for but yet had been occurring for some time prior to his appointment.

95. Mr Jones did not consider that the Respondent had breached its repairing obligation since he became chair. He was not aware of when the exterior was last painted. The S.20 process had commenced immediately for the gable wall repair upon his appointment and they had been liaising with Eastleigh Borough Council. He did not believe that the Respondent could be in breach of its repairing obligation having undertaken the same.

96. It was believed that the disrepair of the western gable wall was known from 2017 according to Board records and an email received from Mrs Kennedy in 2022. Works had previously been approved with HMS but not carried out.

97. With regards to the swimming pool, the Respondent said it would be repaired and upgraded. The main issue was the heating, or lack of following the gas boiler being condemned. Heat source air pumps were too expensive and so quotes were going to be obtained for a new gas boiler by the end of summer 2024 although it was difficult to find a contractor to install the same. As such, the swimming pool was usable but unheated.

98. Mr Beetson called Mr Harper.

99. Mr Harper provided a brief outline of his history with the property, explaining that issues were identified with the building around 2021. These included the gable wall, swimming pool and roof. A condition report was obtained from Primmer Olds and a ten year plan of maintenance was devised which was provided to leaseholders at the AGM in October 2021.The required works equated to £600,000 plus VAT and the reserve funds were insufficient to cover the same.

100. At the March 2022 AGM, Primmer Olds were asked to attend. Questions were received from leaseholders as to why an additional £20,000 was required for

year 1 of the plan yet finances would still be inadequate. A vote was taken on a parking plan and visiting, swimming pool and leaseholder conduct policies were raised.

101. By mid 2022 a number of lease breaches had occurred and the S.20 process had begun in August 2022 in relation to the south elevation.

102. All leaseholders were written to requesting lease compliance and requested to co-operate with other leaseholders. This was not well-received and as such solicitors were instructed.

103. With respects to the draft plan and immediate action that he would undertake if appointed, Mr Harper explained that a fresh start would be required. The gable end north wall would be an immediate priority. He would question whether dispensation would be required to expediate the same. The ten year plan would need to be reviewed, noting that it was now three years out of date. Finances and fund raising would be reviewed. Communication with leaseholders would be undertaken and policies in relation to paths and the swimming pool would be implemented. A fire risk assessment had been previously done in 2021 but now required updating and items were to be addressed in an appropriate order.

104. Mr Bowker questioned Mr Harper.

105. Mr Harper confirmed that there were some 21 fees described as 'ad hoc' HMS Property Management Services Ltd totalling approximately £21,146 within the draft accounts [913]. This equated to approximately £1,500 per flat on an average basis, excluding the appropriate apportionment. It was said that all fees, including larger fees at over £1,000 were recorded accurately and there would have been supporting timesheets for the same.

106. With regards to the loan agreement [622] between the Respondent and former director Deidre McColl, Mr Harper confirmed that it was his signature on the drawdown request. It was further confirmed that Deidre McColl had requested the loan to be discharged and offset against her service charge account.

107. Mr Harper explained that HMS Property Management had instructed Steele Raymond LLP to provide the Respondent with legal advice. They were engaged between the 30 August 2022 and 29 March 2023, approximately. In response to Mr Bowker's line of questioning, Mr Harper could not confirm that the 21 invoices from Steele Raymond LLP totalled £16,575 approximately as he had not counted the same himself.

108. Mr Harper confirmed that he and a Mr Shaun Eckerton were both directors of HMS Property Services. It was confirmed that Mr Shaun Eckerton was married to Mrs Paula Eckerton, Mr Harper's daughter. Mrs Eckerton was also a partner at Steele Raymond. It was accepted that the ad hoc fees went to HMS Property Management where he and his son-in-law were directors, and the legal fees went to Steele Raymond where his daughter was a partner. It was further confirmed that loans were made by the Directors of the Respondent to pay those fees. The intention had been that the service charge accounts would be adjusted

accordingly but it did not matter whether the Directors were paid back directly or otherwise.

109. With regards to the 2023 accounts, Mr Harper had stated that they were agreed and the Applicant's assertion to the contrary was untrue.

110. Mr Harper did not accept that the problem with the property related to legal fees although confirmed that he was acting as managing agent at the relevant time. In response to Mr Bowker's line of question, Mr Harper stated that it was wrong that he could not be part of the solution when he was inextricably linked to the past problems. It was said that the truth had not come out with regards to the past problems.

111. Mr Harper explained that legal advice was required in relation to breach of lease. There was to be court proceedings to recover debt but as the case did not proceed the legal fees for the same could not be recovered. It was said that there were letters relating to the same that were not included within the hearing bundle.

112. Mr Harper outlined his experience and the nature of buildings and issues he had dealt with professionally. It was said that he knew how buildings ought to be run. He did not believe that there were any issues with the management delivered by HMS Property Management Services Ltd and the same acted appropriately at all times. Further, there had never been any breach of data protection. Relevant leaseholders were communicated on an individual basis where applicable and solicitors had dealt only with the leaseholder subject to the alleged breach of lease.

113. With reference to the Improvement Notice, Mr Harper was directed to the variation of the same, noting the dates to comply and the potential penalty for non-compliance. It was said that whilst good progress had been made, completion, and thereby compliance would not be within the required timeframe. As such, he would need to liaise with the local authority. A dispensation application could potentially be made to expediate the process. Upon further questioning, Mr Harper acknowledged that dispensation would not shorten the process if opposed.

114. With regards to the ground for an appointment of manager, Mr Harper accepted that there was much to deal with. He proposed a renumeration of £4,200 plus vat, accepting that this would equate to approximately 40 hours of work per annum. It was said that if services were delivered beyond this, an additional hourly rate would be charged to cover the same. Mr Harper said that the service would equate to approximately 3-4 hours per month. Mr Bowker proposed that 1 day a week would be more likely based on the number of issues.

115. When challenged on the point and the level of service to be delivered, Mr Harper suggested that another managing agent could be appointed if this was not satisfactory to which Mr Bowker clarified the distinction that Tribunal would be appointing Mr Harper personally and not a managing agent.

116. It was accepted that if work was undertaken for one day a week, his fees would run into several hundreds of pounds per flat whereby currently Mr Jones and the

board were currently undertaking this work on a voluntary basis. Notwithstanding, Mr Harper said that the issue to the south elevation had existed since 2022 and that HMS would be able to progress the works. Issues had manifested from previous breaches and legal costs. Invoices would only be issued for work carried out and on a cost basis. There would be no commissions received, nor would he profit from the misfortune encountered by the parties although it was accepted that his resulting fees would be significant over the two year term.

117. Upon questioning by the Tribunal panel, Mr Harper said that HMS had previously resigned owing to legal and insurance matters which had meant that they could not continue to act as managing agent. It was said that the bundle did not tell the whole story as to the history but he would be able to help. HMS had recently been involved with other buildings that had complex issues and would not shy away from difficult issues, nor were they intimidated by solicitors. The information presented with regards to the application was intended to mislead the Tribunal. The 2023 accounts were not accurate, for example. It was not known what ultimately happened as court action was dropped. The accounts for 31 December 2022 were correct but anything beyond that was questionable.

118. It was said that the priority under his proposed appointment would be to update the 10 year plan and remediate the gable-end wall. All leaseholders needed to be on-board and the ‘them and us’ situation could no longer continue.

119. With regards to the current remediation plan to the gable end wall, Mr Harper said he did not now whether it was the correct proposed remediation but as Primmer Olds BAS were instructed he had some confidence in the proposal. The previous proposed remedy of rendering the wall had occurred when the contractor was undertaking a repair to the south elevation and he was asked to provide an opinion on the work required to the gable-end wall and a cost estimate which was in the region of £7-8,000.

120. Mr Harper confirmed that he had never been a Tribunal appointed manager previously.

121. With regards to the improvement notice and his experience of dealing with Eastleigh Borough Council, it was said that it was not something he dealt with often in the buildings he had managed although there were occurrences of the same in Bournemouth.

122. Mr Harper said that he was an individual fellow of the Chartered Insurance Institute but did not have any accreditations or registrations elsewhere. HMS had some 21 members of staff, many of which were qualified with the The Property Institute (TPI), although he was not himself.

123. Mr Harper had said that the previous conflict of interest that led HMS to resign in early 2024 had now been reconciled. At the time, it was not known whether the company’s insurance would take on a claim and he could not be in the position of hearing privileged information sent to board members. With regards to the handover, all relevant information was provided to Evolve. G H Property Management then came to HMS for further handover. All privileged information

was with Warner Goodman LLP. Prior to HMS's instruction he has no real history of the building prior to the previous managing agent Denfords, involvement. He thereby created a history from old box files and gave a professional handover to the new board.

124. It was said that Mr Harper had last inspected the property some 3 months ago externally.

125. Mr Harper's main objectives were the gable-end wall, finance to be put in place and a ten-year plan for cash flow purposes. Upfront funds would be required although a definite figure was not currently known. Mr Harper estimated that it would be in the region of £30,000 plus VAT. The ten-year plan would need to be reviewed to calculate funds required for remaining works.

126. With regards to engaging leaseholders, Mr Harper said he would present the facts to them. It was believed that they would now co-operate as at present they cannot sell their properties owing to the issues at Hamble Manor.

127. With regards to his understanding of an appointed manager, Mr Harper understood that an appointee reports to the Tribunal. He did not see this as any different from reporting to a board.

128. Mr Bowker asked a supplementary question in relation to the ten-year plan provided by Primmer Olds BAS in 2023 [247] as to where the gable end wall could be found within the plan. Mr Harper said that it would fall under the heading 'external walls' but could not find the individual line entry specifically relating to the same. It was said that the gable wall was the third priority at the time of the ten year plan. Mr Harper was permitted to leave the witness box to fetch his glasses to assist with viewing the document, whilst doing so he consulted with his colleague who sought to assist in Mr Harper in answering the questions. When the Chair informed Mr Harper that he could not seek such assistance whilst giving evidence, Mr Harper challenged the same given he was referring to an external report.

129. Mr Beeston asked where line 5.1 was within the table [253] to which Mr Harper confirmed that it appeared to be missing.

130. Mr Bowker made his closing statement. It was said that it was for the Tribunal to determine whether the gateway was opened by the alleged breaches of the Respondent's obligations [23]. The critical issue is whether it is just and convenient to appointment a manager. This would be the line of demarcation. If crossed, no board would be in place nor a decision-making body, there would be no prospect of the gable wall being fixed nor would a managing agent be appointed. This was not the case here. It was not for the FTT to resolve factional differences. The listing of 1 day was appropriate for the issue.

131. History is relevant to the future, it is an indication to the root of the problem. The shortfall in service charge revenue is owing to payment towards previous legal fees to Steel Raymond and ad hoc HMS fees. It was said that appointing Mr Harper was not the solution. Mr Harper had repeatedly used the word 'we'. Mr

Harper would come with HMS. The impression is that he does not know what a Tribunal appointed manager is.

132. The situation was complicated and it could not be unravelled by Mr Harper alone. Mr Jones and Mr O'Sullivan gave the impression of competence to solve.

133. Mr Beetson gave his closing statement.

134. Firstly, Mr Beeston responded to Mr Bowker, stating that it was not for the Respondent to contend that there was no gateway to find breach of covenants under the lease. An improvement notice was served in relation to a flat situated behind the gable end wall. There had been further breaches of the management code, consultation requirements and outstanding fire safety matters.

135. Just and convenient was the critical issue and it is a broad test. The suggestion that a management order being appropriate only where a board had disintegrated was putting the threshold far too high. The Respondent's breaches were more than minor. Mr Jones had denied that there was a breach of the Respondent's repairing obligation whereby the improvement notice had been extended.

136. The property would benefit from a Tribunal appointed manager to act as a buffer from leaseholders where management is infracted.

137. With regards to Mr Harper, there was nothing improper in him recommending a solicitor where there had been breach of leases. Furthermore, the use of the plural 'we' instead of 'I' was a nothing more than a slip. His evidence was detailed and he was able to answer the questions posed by the Tribunal.

138. Mr Jones's denial of the breach of covenant was disquieting. Works had not started to the gable-end wall despite the service of an improvement notice. Mr O'Sullivan's evidence was vague and he was unable to assist the Tribunal with the vast majority of their questions. It was said that a contractor for the gable end remediation had not been identified whereby Mr Jones said one had not been instructed. It was not known whether water testing had taken place, information regarding the gardener was limited, direct knowledge as to service charge accounts was limited, no action had been taken with regards to the parking breaches.

139. The premises need a manager that could take action. Mr O'Sullivan had said little as to what had been done over the last six months.

140. Mr Jones was said to have been verging on facetious with regards to the S.20 consultation process that commenced on 17 July 2024 with a notice of intention, which he had referred to as nothing formal. His evidence had been evasive and pedantic. A breach in relation to fire safety was admitted. There were insufficient funds to carry out works required across the property, yet service charge revenue had been reduced. Such mismanagement was a ground for an appointment for a manager where major works were expected.

141. Mr Beetson cited the need for the Tribunal to determine that it is just and convenient to appoint a manager. If the Tribunal found it was just and convenient to appoint a manager but Mr Harper was not the preferred appointment, the Tribunal is invited to adjourn for six weeks to allow the Applicant time to nominate a new manager.

142. Mr Harper had said himself that he did not have to be here today. There were five flats in support of his nomination and only two opposing. It was of surprise that more leaseholders had not given evidence. Mr Harper had knowledge of the property and its issues and was best placed to manage it properly.

143. At the end of his submissions, Mr Beetson confirmed that he was not making any applications in respect of S.20c and Para 5a Schedule 11. There was no cost provision in the lease in any event. It was not for the landlord to recover costs. If wrong, he submitted that it would not be appropriate for the Landlord to recover costs whereby the application was borne out of frustration. The application was entirely justified and proper.

Evidence and Findings of Fact in Relation to Matters in Dispute

144. The Tribunal would like to thank all parties for their co-operation and participation with the Tribunal. Owing to length of the hearing, the Tribunal panel were unable to conduct its deliberations immediately after the hearing, Regrettably, this led to a delay in writing and issuing the decision, which was further hampered by the availability of the panel over the summer period.

145. The Tribunal reminded itself of the Applicant's grounds for appointment of a manager which were vast. This was reflective of the complex history of the building and the parties. The parties had agreed to a timetable for the hearing to which was adhered to, although the grounds were not narrowed. This inevitably led to a brevity of evidence heard, particularly in consideration of the length of the hearing bundle and number of exhibits included.

146. Mr Bowker and Mr Beetson had confirmed that they were content that the all evidence had been heard and made no request for the hearing to reconvene to hear further evidence nor to make any further submissions.

147. The Tribunal considered each ground in turn but concluded that it was unable to make findings on each specific ground due to insufficient evidence presented. Consideration was given as to whether further submissions were required under the Tribunal's overriding objective to deal with the case fairly and justly (Rule 3 Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013). It was decided that in the interests of proportionality, particularly with regards to costs and resources of the parties, that in the round, the Tribunal had heard sufficient evidence to make a decision on the matter.

148. The Tribunal has therefore focused on making findings for the most pertinent breaches that were made out within the course of the hearing, whilst standing back and considering matters on the whole.

149. That approach is not to say that there was not some merit to the grounds that the Tribunal did not make findings upon. Issues had occurred over several years. There had been three separate management agents involved in 2024 alone and changes to the board of directors for the Respondent. The Tribunal were therefore not compelled to make findings on certain historical issues whereby oral witness evidence had not been heard, either as a result of the limited number of witnesses called for evidence or as a result of those witnesses having limited direct knowledge of events.

150. With regards to the allegation that the year end 2023 service charge accounts were inaccurate as were the demands levied, the Tribunal did not hear sufficient evidence to make a finding. A detailed analysis and testing would be required for the same. In any event, such issues relating to historic service charges would fall within the scope of a S.27a service charge determination.

151. Furthermore, during the course of proceedings, there were numerous references to the 'old board' and 'new board'. The terminology opted was sometimes helpful in relating to timing of events although often, and throughout the course of the hearing bundle, it related to the allocation of blame for acts or omissions of either party. For the avoidance of doubt, any references made by the Tribunal to the 'Respondent' is one and the same as Hamble Green Management Limited regardless of its board composition at any one time.

<u>Failure to maintain and keep in good and substantial repair and condition the external walls:</u>

152. The Tribunal found the inspection of the property to be of assistance in consideration of the external walls. There was some evidence of damp and historic water ingress to the internal covering of the western gable end wall within the kitchen of Flat 3 whereby there was a small area of wallpaper which had visibly lifted. The plaster and render coatings had been removed to the internal face of the wall to the ensuite bathroom of Flat 3, understood to have been a consequence of water ingress and damp. Beyond this, the Tribunal did not see any evidence of water ingress at the time of the inspection, although noted the limitation of its visual inspection, particularly whereby the kitchen was decorated with a wallpaper covering and the plaster had been removed in the ensuite bathroom. The Tribunal were aided by the photographic schedule provided by the Applicants within the hearing bundle [291] which showed the bathroom with staining to the plaster coverings prior to its removal. The same report included photographs of damp within Flat 1 which was also subject to an Improvement Notice although the Tribunal were not taken to the same during the inspection.

153. Externally, the external wall was visibly in poor condition with paintwork peeling in areas with the brickwork appearing to be in poor condition throughout. The Tribunal had the benefit of inspecting during a period of heavy precipitation and the wall was visually wet and very much exposed owing to its position. The remaining walls of the older building whereby the six flats were located appeared to be in an average condition, although some areas of masonry and paintwork were visibly poorer than others.

154. The Tribunal considered that on the basis of the inspection, the Applicant's evidence and the Improvement Notice which had been served on 10th July 2024 in relation to the western gable wall, which was yet to have been complied with, there was sufficient evidence of disrepair.

155. It was said by Mr Jones that he did not believe that this amounted to a breach of the Respondent's repairing obligations due to the action taken by the new board since its election in January 2024. The Tribunal were not compelled by this argument. Whilst the Tribunal could see that significant progress had been made in terms of the engagement of Primmer Olds BAS report from March 2024, the S.20 process now complete and with a contractor to be engaged imminently, the Respondent (regardless of the board in place at the time) had failed to meet its repairing obligation in respect of the western gable wall from 2017.

Failure to carry out works required to satisfy recommendations set out in a fire safety risk assessment, in accordance with the Service Charge Residential Management Code and Additional Advice to Landlords, Leaseholders and Agents 3rd Edition

156. The Tribunal finds that the Respondent has failed to implement fire safety recommendations. It was accepted by the Respondent, both within the evidence of Mr Jones and Mr O'Sullivan that the recommended fire safety improvements identified by Hampshire Fire and Rescue Service following an inspection from a Fire Safety Visiting Officer remained outstanding. Mr Jones had stated that only the first item had been completed. Mr O'Sullivan explained that items 2 and 3 were of high priority to attend to in the foreseeable future but a section 20 consultation would be required with regards to the works to compartmentation.

Consideration of whether grounds for an appointment have been made out

157. The Tribunal has determined that the landlord is in breach of its obligations owed to the tenants under Clause 4(ii) of the occupational leases to keep in good and substantial repair and condition the external walls, specifically the western gable wall.

158. The Tribunal has further determined that the landlord is in breach of the Code of Practice approved by the Secretary of State under Section 87, Leasehold Reform, Housing and Urban Development Act 1993 by failing to adhere to the 'Service Charge Residential Management Code and Additional Advice to Landlords, Leaseholders and Agents' 3rd Edition. This is specifically in relation to Part 8.4: Failure to carry out works required to satisfy recommendations set out in a fire safety risk assessment. It was accepted by the Landlord that the recommendations of the Fire Risk Assessment dated 7 September 2024 have yet to have been fully actioned.

159. Whilst the Tribunal has declined to make findings of facts in relation to the remaining grounds, its findings in relation to the above are sufficient to meet the

statutory threshold for the making of an order and sections 24(2)(a)(i) (a) and (ac) have been made out. Any subsequent findings are therefore not required.

160. As the threshold had been cleared, in principle an appointment of a manager could therefore be made, provided that was determined to be just and convenient. The next question for determination by the Tribunal was one of whether the appointment of a manager was just and convenient.

Consideration of whether it is just and convenient to appoint

161. The Tribunal considered the long, complex history with the premises and the parties involved. Whilst the Tribunal declined to make findings on all of the aforementioned grounds, it was clear that there had been circumstances which led to the allegations made and whilst not fully evidenced throughout the course of the hearing, the same were not unfounded.

162. Mr Beetson submitted that a Tribunal appointed manager would provide a buffer between the parties. The Tribunal could see merit in that. However, much of the conflict surrounded actions or inactions taken by previous boards and the current 'new' board. As Mr Beetson acknowledges [page 10 of Respondent's skeleton statement], it is not for the Tribunal to resolve such conflicts.

163. There was much work to be done at the property, items of disrepair to include external walls, fire safety improvements to be implemented, a replacement heater and upgrades to the swimming pool and service charge funds needed to be increased. The change over in management agents had compounded matters. Mr O'Sullivan provided background to the handover between arrangements between HMS, Evolve and GH, all of which had been protracted. In Mr Jones's evidence he explained that it took time for him to ascertain historical events and records were not always freely available such as his enquiries as to when the disrepair to the western gable wall was first discovered, the nature of the proposed remedy at that time and whether investigations into the same had occurred. There had been a lot of change yet little action over the years.

164. The Tribunal considered that the recent appointment of GH Property Management was a positive step in providing some stability. Mr O'Sullivan explained that he understood the gravity of the issues and conflict between the parties prior to being instructed in August 2024. The Tribunal found Mr O'Sullivan was unable to answer many of its enquiries with necessary detail. Mr O'Sullivan explained that he was not personally dealing with all matters and that he had a team of some 20 staff assisting. This was disappointing although given the relatively short length of time of the appointment of GH Property Management had been appointed for and the complex and protracted handover process it was considered to be understandable by the Tribunal.

165. With regards to the progress made by GH Property Management, the Tribunal considered that it was modest but progress, nonetheless. Mr Jones had confirmed that the S.20 process in relation to the western gable wall and associated works to the northern elevation and flat roof/balcony had concluded and they would enter into a contract for the works imminently, based upon the

specification provided by Primmer Olds BAS. Whilst the Tribunal considered that whilst dispensation was an option, it was the Respondent's prerogative as to whether an application is appropriate. Mr Jones had explained that dispensation would not have expedited the repair given the recommendation to commence works in Spring time. This was supported within the evidence of the dates that Primmer Olds Reports were received and the recommended timing within the specification [318] and the varied improvement notice [302].

166. With respect to the other works outstanding, both Mr Jones' and Mr O'Sullivan's accepted that the recommendations of the fire risk assessment had not been implemented although Mr Jones stated that some works had been undertaken and quotes were currently being received for the next stage. Mr O'Sullivan had considered a S.20 process for future improvements. The Tribunal also considered this to be very modest progress.

167. On balance, the Tribunal considered that whilst it would have been desirable for more progress to have been made, particularly in respect of the western gable wall and associated works, the Respondent's new board and managing agent had made some early advances. Whilst Mr O'Sullivan had limited direct knowledge of the property, the Tribunal was mindful that he was instructed relatively recently, having dealt with a complicated handover process, disrepair issues and a history of contentious legal actions.

168. The Tribunal also gave consideration to Mr Bowker's submissions regarding the potential costs to be incurred by a Tribunal appointed manager, noting that the current board of Directors operate on a voluntary basis. Whilst the Tribunal considered that cost implications should not determine whether it is just and convenient to appoint a manager, in this case, there was a shortfall of funds to enable the Respondent to fully fulfil its repairing obligation in respect of the external walls, fire safety improvements and swimming pool in particular, but amongst other ongoing maintenance requirements. The Tribunal had heard of financial shortfalls whereby previous directors and parties of the Applicant provided a loan to the Respondent. Given the progress made by the Respondent since early 2024, the Tribunal considered that it there would be an additional financial benefit to the parties to allow the Respondent and its managing agent more time to resolve matters.

169. A Tribunal appointed manager should be a last resort. Where there was small progress being made there was an indication of hope that matters could be resolved.

170. In light of such, the Tribunal considered that at this stage it is not just and convenient to appoint a manager. That it is not to say that if the Respondent does not make adequate progress to resolve matters within a reasonable length of time, that it would not be just or convenient at a future date.

<u>Decision whether to appoint a manager</u>

171. Consequently, in relation to the matter of appointing a manager in principle, the Tribunal does not find it just and convenient to appoint a manager for the Property.

172. As such, the Tribunal is unable to consider the Applicant's request for a 6 week adjournment to nominate an alternative manager.

Nomination of Mr Dennis Harper

173. The Tribunal considered that had it found it to be just and convenient to appoint a manager, Mr Harper would not have been suitable for the role.

174. The Tribunal considered that whilst Mr Harper seemingly had extensive knowledge of the property and the issues, at least up until the point of HMS's resignation, it was not satisfied that he was independent of the parties. During the course of his evidence, Mr Harper had made suggestions that the Tribunal was not presented with all information, inferring that was deliberately so. He had further asserted that the 2023 service charge accounts were not accurate despite Mr Jones and Mr O'Sullivan's earlier evidence to the contrary.

175. Throughout the course of the hearing, Mr Bowker had made submissions as to Mr Harper's family connection to the law firm providing the Respondent with advice and subsequently incurring substantial fees both with regards to the legal advice and for additional fees to HMS in relation to the same. The suggestion was that Mr Harper had profiteered from the circumstances and there was a perceived conflict of interest arising from the legal advice provided.

176. The Tribunal declines to make any finding as to whether there was any improper conduct on the part of Mr Harper, HMS, or his relatives involved. The other parties were not parties to the proceedings nor were they witnesses whereby evidence could be tested. The issue was beyond the scope of the application. Notwithstanding, the Tribunal were persuaded by Mr Bowker's submissions that a person with fundamental involvement in events that compounded leaseholder disputes and led to the depletion of funds could not be a part of the solution to resolve matters.

177. Furthermore, Mr Harper's demeanour whilst giving evidence indicated to the Tribunal that he may not be best placed to handle the hostility between the parties. Mr Harper was clearly impassioned and invested in the situation. Mr Harper himself stated that he did not have to put himself in the position of being nominated. Whilst the Tribunal considered this to show a level of commitment, it was not satisfied that Mr Harper would be able to be unbiased. The Tribunal considered that as such, any future involvement from Mr Harper may ignite disputes further.

RIGHTS OF APPEAL

1.A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk

2.The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3.If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.