

**IN THE LEASEHOLD VALUATION TRIBUNAL**

**IN THE MATTER OF PART II LANDLORD & TENANT ACT 1987**

<b>Case No</b>	CHI/00ML/LAM/2007/0006
<b>Property</b>	113 Roundhill Crescent Brighton
<b>Applicant</b>	Ms Helen Moylan-Jones Flat 2 Ground Floor Flat
<b>Respondent</b>	Mr Peter Herbert Fowlds
<b>Members of Tribunal</b>	Ms H Clarke (Barrister) (Chair) Mr J N Cleverton FRICS Mr T W Sennett MA MCIEH
<b>Date of hearing</b>	28 March 2008
<b>Date of decision</b>	29 April 2008

**1. THE APPLICATION**

The Applicant asked the Tribunal to appoint a manager of the property on the grounds that the Respondent had not complied with his obligations. The Applicant also sought an order under s20C Landlord & Tenant Act 1985 that any costs incurred by the Respondent in connection with the proceedings are not to be taken into account in determining the amount of service charges payable.

**2. THE DECISION**

The Tribunal decided for the reasons set out below to appoint Mrs Jer Overill DipSurv of Peter Overill Associates as manager and receiver of the property for a period of 2 years with effect from a date to be specified in the Order (but in any event no later than 1 May 2008) subject only to the condition that Mrs Overill must produce to the Tribunal by 4 April 2008 evidence of her professional indemnity and public liability insurance cover.

- 3.** The Tribunal ordered that any costs incurred by the Respondent in connection with these proceedings are not to be taken into account in determining the amount of service charges payable.

**4. THE ORDER**

The Tribunal will make an Order setting out the terms upon which the appointment is to be made.

**5. THE LAW**

S24 Landlord & Tenant Act 1987 ( as amended) provides, so far as is relevant, that a Leasehold Valuation Tribunal may appoint a manager/receiver where it is satisfied that a relevant person (in this case the landlord) is in breach of his obligations to the tenant under the tenancy and/or has failed to comply with his obligations to manage the property in accordance with the RICS Residential Management Code of Practice, and the Tribunal is satisfied that it is just and convenient to make the appointment.

**6. THE LEASE**

The Applicant Ms Moylan-Jones is the current tenant under a Lease dated 22 September 1975. The relevant clauses of that Lease place the following obligations upon the landlord:

*"..to insure and keep insured the Building...and whenever required produce to the Lessee the policy or policies of such insurance and the receipt for the last premium of the same..."*

*"(to) send to the Lessee an account ...showing the amount spent on maintaining and managing the Building..during the year ending on the previous 29<sup>th</sup> day of September and the amounts actually received in that period from the Lessees of all the flats...the annual account shall also include a reasonable reserve..."*

Upon receipt of the annual account the Applicant is obliged to contribute one-quarter of the relevant costs.

7. The Tribunal was not shown the Lease of any other flat in the property.

**8. THE PARTIES**

The Applicant is the Lessee of Flat 2 Ground Floor Flat at the property. The freehold reversion to the Applicant's Lease was registered in the name of Mr Peter Fowlds with effect from 6 May 2004, although the Applicant believed that the Respondent had been her landlord since about 2000. The property contains 3 other flats the registered proprietor of which is in each case Petrian Ltd. It appeared from the documents and evidence that the director of Petrian Ltd is the Respondent Mr Peter Fowlds. Mr Martin Fowlds had corresponded with the Tribunal and with the Applicant on behalf of the Respondent. Some of his letters were sent under the heading of Longholt Estates. The Applicant said that although she had sent letters to Longholt Estates in respect

of her lease, she had never been notified that Longholt Estates or any other person was the managing agent on behalf of the Respondent.

**9. THE INSPECTION**

The Tribunal inspected the property immediately prior to the hearing. Access was given on behalf of the Respondent, who did not himself attend, and the Applicant together with her solicitor and her proposed candidate for appointment attended the inspection. The property was a Grade 2 listed four-storey end of terrace house in a conservation area built in approximately 1875 and converted into four flats. The exterior looked to be in fair condition although there was a need for redecoration. There was a shared rear garden which was overgrown. The common parts were in adequate order but evidently had not been decorated for some time and required some attention to the plaster. Lighting was provided to common parts and there was an intercom system although it was not clear whether it was in working order. The Tribunal inspected the interior of Flat 2 and observed areas of dampness to the front and flank walls which appeared to be associated with external disrepair.

**10. THE HEARING**

The Hearing was attended by the Applicant Ms Moylan-Jones who was represented by Ms Fitzpatrick of Dean Wilson Laing Solicitors. The proposed candidate for appointment as a manager, Mrs Jer Overill of Peter Overill Associates also attended as did Mr Peter Overill, a partner in the firm.

11. The Respondent did not attend the hearing nor was he represented.

12. Directions for the exchange of statements and evidence were given on 4 January 2008. In compliance with the directions the Applicant lodged a statement of case with supporting documents. The Respondent did not provide a statement of case but Mr M Fowlds provided a statement and some documents shortly before the hearing date. The Tribunal had regard to the documents provided by both parties in the course of its decision.

**13. THE EVIDENCE**

The Applicant produced a copy of a Notice served on the Respondent on 12 October 2007 in accordance with s22 Landlord & Tenant Act 1987. The Notice referred to the following matters:

- failure to provide a policy of insurance or proof of renewal payment:
- failure to redecorate and maintain common parts:

- failure to provide service charge accounts since 2002:
- failure to carry out inspections for fire and asbestos safety.

14. At the hearing the Applicant relied on the matters set out in the Notice with the exception of the redecorating and maintenance obligations, as she preferred to reserve her position on these.
15. The Applicant said that she took over the Lease in 1990. She said that the Respondent became her landlord in about 2000, prior to which she had been provided with annual statements of the service charge account setting out the transactions as required by the lease. Since 2002 she had not received any accounts nor any demands for service charges nor ground rents. She remained willing to pay what may be due but had no idea what that may be.
16. In response to the Notice Mr M Fowlds provided some print outs from a computerised record. These were dated 29 October 2007 and referred to a period commencing April 2001. They showed entries for the 4 flats in the building recording ground rent and service charge due as total annual sums. In 2003 there was a list of entries for 'refurbishment works'. The Applicant believed that these related to the cost of refurbishing the first and top floor flats. The records ran from 1 April to 31 March whereas the Lease required the accounts to be prepared to 29 September each year.
17. Mr M Fowlds stated in correspondence on behalf of the Respondent that he had asked his accountants Nash Harvey to prepare formal accounts. These were submitted under cover of a letter dated 18 March 2008.
18. The Applicant said she had been trying since 2000 to obtain proper service charge accounts and details of the insurance. The Tribunal was shown correspondence from the Applicant and her former solicitors in 2000 and 2001 asking for the full insurance information. She had written other letters since 2001 asking for the information. In 2007 her present solicitors repeated those requests and pointed out to the Respondent that failure to comply constituted a criminal offence.
19. In response to the Notice under s22 Mr M Fowlds sent the Applicant's solicitors the Schedule to an insurance policy for the property. The name of the policy holder was given as Petrian Ltd. Subsequently Mr M Fowlds provided an amended Schedule dated 11 March 2008 in the name of the Respondent and explained this had occurred as a result of administrative oversight. By the date of the hearing the Applicant said she had still not been provided with a copy of the policy nor a receipt for the last premium. Mr Fowlds sent the Applicant's solicitors a receipt in favour of the

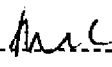
insurance brokers, but it did not indicate who had paid it nor for what it was paid. The amount shown on the receipt was not the amount shown on the Renewal Schedule produced by Mr Fowlds.

20. By his letter dated 6 November 2007 Mr M Fowlds said that he expected the asbestos and fire safety reports would be carried out the following week and he would send them to the Applicant's solicitors. No such documents had been received. Later he said that it was the intention of the Respondent to have such reports prepared after new managing agents were appointed.
21. The Applicant also relied on the provisions of the RICS Residential Management Code of Practice with which she said the Respondent had failed to comply as regards provision of information about insurance, maintaining and providing accounts, keeping service charge payments in a separate account as a trust, responding promptly and properly to requests for information, carrying out statutory duties as regards fire and asbestos safety checks, and carrying out regular inspections of the building.
22. The Applicant had previously wished to sell her flat, but had not been able to do so because of uncertainty about service charges, insurance and the health and safety checks required.
23. The Respondent had emigrated and now lived in Italy. Mr M Fowlds also planned to move overseas imminently. Accordingly it was planned by the Respondent that local managing agents would be appointed by him. In the light of this intention, the Respondent's position was that the appointment by the Tribunal of a manager was unnecessary.
24. The Tribunal heard from Mrs Jer Overill, the proposed candidate for appointment by the Tribunal as a manager. She provided information as to her proposed remuneration and her qualifications and experience of management, and as to her professional and public liability insurance. Mr Peter Overill was also present to confirm that information.
25. **REASONS FOR DECISION**  
The Tribunal examined the computer printouts dated 29 October 2007. There was no indication of how the figures for service charge were arrived at, no record of what sums expended were for, and the figures could not be reconciled. The figures for refurbishment in 2003 appeared to be charged to the freehold. There were large payments to builders with no explanation. No supporting invoices or documentation was provided. These printouts could not be said to meet the requirements under the Lease or the RICS Code of Practice for service charge accounts.

26. The formal accounts prepared by Nash Harvey were headed 113 Roundhill Crescent Property Management and were prepared in the style of company accounts. This name and title did not appear anywhere else, and no company number was given. The total of ground rent and service charge for each of the 4 flats was added together and appeared as profit. There was no information about the outgoings. No entries appeared for expenditure on insurance in several of the years. No entries appeared in respect of interest. The accounts did not run from 29 to 28 September in each year. They were not signed. These accounts could not be said to meet the requirements under the Lease or the RICS Code of Practice for service charge accounts. Moreover the Tribunal considered that they gave rise to concern that the Respondent had not distinguished between ground rent and service charges or recognised his obligation to hold service charges in trust. On this evidence the Tribunal found that the Respondent was in breach of the obligations which he owed to the Applicant to provide her with annual service charge accounts in the form required by the lease. Moreover the same omissions comprised a failure to comply with the RICS Code of Practice.
27. The Tribunal noted that until 11 March 2008 the insurance policy schedule named Petrian Ltd as the policyholder when it appeared that Petrian Ltd had no insurable interest in the property. The Tribunal did not accept it as a sufficient response that there had been an administrative oversight by Mr Fowlds. The effect of the error may have been that the building had had no insurance cover prior to correction. The Respondent had been on notice of the Applicant's concern regarding insurance since 2001. Even to the date of the hearing the Respondent had not produced the policy and had offered no explanation. The receipt tendered by Mr Fowlds did not correspond to the amount of the premium stated on the renewal schedule. There was no evidence before the Tribunal that the building was currently insured and no policy. On this evidence the Tribunal found that the Respondent was in breach of the obligations which he owed to the Applicant under her lease to insure the property and to produce the policy and receipt. Moreover the same omissions comprised a failure to comply with the RICS Code of Practice.
28. The Tribunal noted that the asbestos and fire safety inspections had not taken place and was satisfied that the Respondent had failed to comply with his obligations under the Control of Asbestos at Work Regulations 2002 and the Regulatory reform (Fire Safety) Order 2005 and consequently with his duties under the RICS Code of Practice.
29. The Tribunal determined that the said breaches of obligation were significant and had affected the Applicant's ability to sell her flat.

The lack of proper response to the Applicant's requests for information, and the avowed intention of both the Respondent and Mr M Fowlds to depart the UK permanently, led the Tribunal to conclude that the position would not be addressed or improved by the Respondent. The Tribunal considered that the Respondent's intention to appoint local managing agents did not address the situation. There was no evidence of the terms of appointment, nobody from those agents had been asked to attend the hearing, and no clarification was offered as to whether those agents would be instructed to manage the freehold interest or the leasehold interests of the flats other than the Applicant's.

30. In the circumstances the Tribunal considered it to be just and convenient that Mrs Jer Overill DipSurv should be appointed as manager and receiver to resolve the problems that exist at the property. Whilst the appointment would be for a period of 2 years in the first instance, any relevant person (including Mrs Overill or the Applicant) would be entitled to apply to the Tribunal for a variation of the order including a variation to make the appointment indefinite.
31. In respect of the s20C application, the Tribunal considered that the Applicant had little alternative but to make the application for a manager due to the Respondent's inaction and failure to manage. Even after the application was made the Respondent had not addressed his omissions and continued to be in breach of his obligations. The Tribunal therefore decided that it was just and equitable that if the Respondent had incurred any costs in connection with the Tribunal proceedings, that those costs should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Signed---------- H Clarke Chair

Dated ---3 April 2008---

## ORDER OF APPOINTMENT OF MANAGER AND RECEIVER

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Property	113 Roundhill Crescent Brighton
Applicant	Ms Helen Moylan-Jones Flat 2 Ground Floor Flat
Respondent	Mr Peter Herbert Fowlds
Members of Tribunal	Ms H Clarke (Barrister) (Chair) Mr J N Cleverton FRICS Mr T W Sennett MA MCIEH
Date of hearing	28 March 2008
Date of ORDER	29 April 2008

#### IT IS ORDERED THAT:

1. Mrs Jer Overill of Peter Overill Associates be appointed Manager and Receiver of the property at 113 Roundhill Crescent, Brighton BN2 3GP with effect from 1 May 2008.
2. The period of Mrs Overill's appointment shall in the first instance be for a period of 2 years commencing on 1 May 2008.
3. Mrs Overill shall manage the property in accordance with:
  - i) The respective obligations of the landlord and the lessee under the various Leases by which the flats at the property are demised, and in particular (but without prejudice to the generality of the foregoing) with regard to the repair decoration provision of services to and insurance of the property;
  - ii) The duties of a manager set out in the Service Charge Residential Management Code ("the Code") published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform Housing & Urban Development Act 1993.



4. She shall receive all sums whether by way of ground rent insurance premiums payment of service charges or otherwise arising under the said leases and is entitled to receive forthwith any uncommitted balance of money standing to the credit of the maintenance fund or service charge account or similar account currently in the control of the Respondent.
5. She shall apply the amounts received by her by way of ground rent firstly to payment of the Landlord's share of her remuneration as provided for by this Order. Upon the Landlord's share of such payment being met she shall forthwith account to the Landlord for the balance (if any) of ground rent received by her.
6. She shall apply such other amounts as she receives firstly to payment of the Lessees' share of her remuneration as provided for by this Order. Upon the Lessees' share of such payment being met she shall apply the remaining amounts in the performance of the Landlord's covenants contained in the said Leases.
7. She shall make arrangements with the insurers of the building, both present (if any) and future, to make any payment under the insurance policy to her as receiver and manager.
8. She may demand from each Lessee a payment on account of service charges not to exceed the following amounts:
  - i) £500 from each Lessee as soon as practicable after the date of this Order;
  - ii) £500 from each Lessee on 29<sup>th</sup> September 2008;
  - iii) thereafter, such amount as she reasonably considers to be necessary on 24<sup>th</sup> March and 29<sup>th</sup> September each year;
  - iv) any surplus shall be carried forward as reserve in accordance with the provisions of the Leases.
9. Each Lessee shall be liable to pay the following amounts by virtue of this Order which shall be recoverable as service charges in the manner provided for by the Leases:
  - i) 12.5% of the remuneration of Mrs Overill as provided for below by this Order and Schedule 1;
  - ii) Payment on account of service charges as provided above by paragraph 8 of this Order.
10. The Respondent freeholder shall be liable to pay on demand 50% of the remuneration of Mrs Overill as provided for below by this Order and Schedule 1.
11. Mrs Overill shall be entitled to remuneration as set out in her letter dated 11 April 2008 and attached as Schedule 1 to this order, namely £200 per annum per flat plus VAT for management and additional charges as set out in Schedule 1.

12. This Order shall remain in force until 30 April 2010 unless revoked or varied by further Order of the Tribunal and the Applicant the Respondent and the Manager shall each have permission to apply to the Tribunal for further directions, variation or revocation of this Order.

Dated 29 April 2008

Signed

Ms. H. Clarke

Chair of the Tribunal