Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LON/00HN/LAM/2009/018

Property:	11 Warren Road Bournemouth Dorset BH4 8EZ
Applicants:	(1) Miss Lianne Marie Barrett (Flat 104) (2) Mrs Hayley Honour Irving (Flat 205)
Respondents:	(1) Beyaz Limited (Head Leaseholder) (2) WRAC 11 Limited (RTM Company)
Date of Section 24 Application:	18 April 2009
Date of Transfer of County Court Proceedings:	16 April 2009
Dates of Directions:	10 June, 25 July 2009
Date of Hearing:	14, 15 and 16 September 2009
Dates of Receipt of further Written Submissions:	14 October 2009
Date of Reconvene by Tribunal:	26 October 2009
Date of Decision:	7 December 2009
Members of Tribunal:	S. Shaw LLB (Hons) MCIArb P. Casey MRICS Mr O. Miller BSc

DECISION

PRELIMINARY

1. This case involves the following matters:-

   (i) An application dated 18 April 2009 made by Lianne Barrett and Hayley Honour Irving ("the Applicants") against WRAC 11 Limited ("the Respondent") for appointment of a Manager by the Tribunal pursuant to the provisions of section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act")

   (ii) A claim by WRAC 11 Limited against Hayley Honour Bennett (now Irving) originally commenced in the Bournemouth County Court on 16 February 2009 and subsequently transferred to the Poole County Court, for alleged arrears of ground rent and service charges. This matter has been referred to the Tribunal by order of the Poole County Court on 16 April 2009 and is dealt with by the Tribunal pursuant to the provisions of section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act").

   (iii) An application in the context of the case transferred from the County Court, by the Applicants against the Respondents for an order under section 20C of the 1985 Act. In addition are other costs applications made by all parties which will be referred to below.

2. 11 Warren Road ("the Property") is a large building in Bournemouth previously used as an hotel. The freehold owner of the building is Mr David Graeme. The building was converted into 6 flats by Mr Graeme in approximately 1993. Mr Graeme has granted a head lease to Beyaz Limited, the first of the Respondents. Beyaz Limited is a company in which Mr Graeme has a 99% shareholding. He and his parents are the officers of the company. The 6 flats in the building are held on long leases and Mr Graeme is also the long leasehold owner of 4 out of the

6 flats. The first named Applicant is the leasehold owner of flat 104 and the second named Applicant is the leasehold owner of flat 205.

3. WRAC 11 Limited (ie the second named Respondent) is a Right to Manage Company set up in accordance with the Commonhold and Leasehold Reform Act 2002. The company was incorporated on 30 May 2007 and it has management of the whole property, including the flats owned and occupied by the two Applicants. The Applicants did not participate in the formation of the Right to Manage Company (the circumstances of which formation will be referred to below) and it is not in dispute that the RTM is effectively directed by Mr Graeme.

4. There have been two sets of Directions issued by the Tribunal in this case. A very full and helpful bundle of documents has been prepared by Mr Graeme on behalf of the Respondents running to approximately 600 pages, and supplemented by further correspondence and documents supplied during and after the hearing. The first set of Directions, which identifies the various issues, can be found at page 95 in the bundle and is dated 10 June 2009; the second set of Directions dated 25 July 2009 varied the directions in some relatively minor ways, which need not be referred to in detail in this Decision.

THE HEARING

5. A hearing of this matter took place during 14 – 16 September 2009. The Applicants did not attend in person but were represented by Mr Barrett (the first Applicant's father) and Mr Irving (the second Applicant's husband). Mr David Graeme appears on behalf of both of the Respondents.

6. After discussion with the parties, the issues were crystallised in the following manner:

Application for Appointment of Manager

(a) has a valid section 22 notice been served?

(b) is it appropriate to appoint a manager under section 24 of the Act?

(c) if it is appropriate to appoint a manager, is the candidate proposed by the Applicants (namely Mr Peter G May BSc FRICS MIRPM) a suitable manager for the purposes of the Act and in the context of this case?

The Claim for Service Charges Arrears Transferred from the County Court

Is the sum claimed by the second-named Respondent payable under section 27A of the 1985 Act, and, if not, is any other sum payable?

The Costs Applications

Should the Tribunal make a direction under section 20C of the 1985 Act, as so invited by the Applicants, and should any other cost orders be made for or against any of the other parties in the proceedings?

It is proposed to deal with the issues as identified above in the same order and, after having summarised the submissions on both sides in respect of each issue, to give the Tribunals' conclusions.

7. The parties have as indicated, prepared extremely substantial documentation for the Tribunal in this case, which the Tribunal has read, and much of which was examined in detail at the hearing. The Tribunal would wish to express its gratitude to the parties for having supplied this material, and no disrespect is intended to the parties if each and every argument and piece of evidence is not referred to in the context of this Decision, which would of course be impracticable. The Tribunal has, however, familiarised itself with not only the

documentation supplied during the hearing, but has studied carefully the subsequent written representations submitted by both parties.

HAS A VALID SECTION 22 NOTICE BEEN SERVED?

8. There was no dispute between the parties that a necessary pre-condition to any application for the appointment of a manager, is the service of a valid notice by the tenant, complying with the provisions in section 22 of the 1987 Act. Mr Graeme on behalf of the Respondents took some seven points challenging the validity of the notice served, and the Tribunal will now deal with these points.

(i) The Name of the Landlord

A copy of the section 22 notice relied upon by the Applicants appears at page 87 in the bundle. By virtue of section 22(1) of the 1987 Act, the notice has to 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".

The notice appearing at page 87 has been addressed to "Bayaz Limited" at the full address of 11 Warren Road. It has also been addressed to Mr D Graeme and WRAC 11 Limited (also at 11 Warren Road) and furthermore to Property Management Solutions, 22 Fulwood Avenue, Bournemouth, Dorset BH11 9NJ. This last mentioned firm is a firm of managing agents appointed by the RTM company WRAC 11 Limited, to carry out management duties in relation to the property. The point taken by Mr Graeme in relation to this notice is that there is a mis-spelling of the first named Respondent "Beyaz Limited" and the document has been addressed to "Bayaz Limited". On this basis, he says that the notice has not been properly served and does not satisfy the requirements of section 22 of the Act.

9. Moreover, he told the Tribunal in evidence that when he discovered this document on the mantelpiece in the hall at the property (where post is usually left) and opened the letter, upon seeing that it was addressed to a company called "Bayaz Limited" he thought that the Applicants had indeed intended to send the notice to "Bayaz Limited" rather than the company which owns the intermediate head leasehold interest and of which he is the main shareholder and director namely the Respondent "Beyaz Limited". He told the Tribunal that he had conducted company searches and discovered that there is indeed a company which at one stage was called "Bayaz Limited", but which subsequently changed its name to "Blossom Maternity Limited". It appears that this company, as its name suggests, traded in women's maternity garments, although why the Applicants would have wished to serve a section 22 notice on this company at the property address remained unexplained.

10. The Applicant explained that, as might be expected, the mis-spelling of the first Respondents' name, by one letter, was simply a typographical error on their part. They sought to correct this by serving another notice, delivered by hand, the same day with the correct spelling of the company name. Sadly however, they compounded their error by omitting to sign the second notice, and in any event Mr Graeme gave evidence to the effect that he had not received the second notice.

11. Mr Graeme argued that since the notice is required by the 1987 Act to be served upon "the landlord" and since the landlord's name had been mis-spelt by one letter, the notice was invalid. The Tribunal considers this to be a somewhat unreal interpretation of the situation. Mr Graeme candidly told the Tribunal that he knew perfectly well that the Applicants were unhappy with the management of the building, and that they had made earlier attempts to institute appointment of a manager proceedings, which for various reasons had not proceeded. He also knew perfectly well from the other information contained within the notice (the references to WRAC 11 Limited, Property Management

Solutions), and of course to the body of the notice itself (with references to an earlier letter dated 15 December 2008 which preceded an earlier attempt at appointing a manager) that this was a further attempt on the part of the Applicants to have a manager appointed.

12. In Mr Graeme's written submissions he cites substantial sections from the speeches of the various Law Lords in the leading decision of Mannai Investment Company Limited -v- Eagle Star Life Assurance Company Limited [1997] 2WLR 945 HL. In particular Mr Graeme seeks to draw a distinction between the approach to be taken in commercial contracts and the requirement of statutory notices. In this respect he relies on a passage in Lord Hoffmann's speech, in which Lord Hoffmann states:

"In the case of commercial contracts, the restriction on the use of background has been quietly dropped..... The fact that the words are capable of literal application is no obstacle to evidence which demonstrates what a reasonable person with knowledge of the background would have understood the parties to mean, even if this compels one to say that they used the wrong word. In this area we no longer confuse the meaning of words with the question of what meaning the use of the words was intended to convey. Why, therefore, should the laws for the construction of notices be different from those of the constructional contracts? There seems to me no answer for this question. All that can be said is that the rules for the construction of the notices, like those for the construction of wills, have not yet caught up with the move to common sense interpretation of contracts which is marked by the speeches of Lord Wilberforce in Prenn -v- Simmonds 1971 [1WLR 1381 and Reardon Smith Line Limited v Yngvar Hansen – Tangen [1976] 1WLR 989]. The question is therefore whether there is any reason not to bring the rules for notices up to date by over ruling the old cases".

13. Although Mr Graeme cites this passage in support of his contentions, it seems to the Tribunal that this approach (advocated by Lord Hoffmann) is precisely the reason for concluding that the mis-spelling of the landlord's name by one letter in this particular case is not fatal to the notice. Of course in the House of Lords decision referred to, the House of Lords did indeed overrule the old cases referred to by Lord Hoffmann, and this landmark decision paved the way for a more objective construction of notices. The question is how a reasonable recipient would have understood the notice bearing in mind its context, the purpose of the notice and the factual matrix generally. It is not clear to the Tribunal that a clear distinction is made in the Mannai case between commercial contracts and statutory notices, as advocated by Mr Graeme, but even if this is indeed so, the Tribunal is satisfied that the landlord for the purposes of the Act has indeed been served and that it would be fanciful to suggest otherwise. What would have been the position, for example, if the "e" in Beyaz had been typed in lower rather than upper case? Alternatively could it be suggested that if the typist had left a space mark between one of the letters of the company's name, the company were therefore not properly served? In this particular case a mis-typing of an "a " for an "e" is, in the view of the Tribunal not such as to render the notice invalid. It is perhaps worth noting that the company name "Bayaz Limited" was not even any longer in use at the date of the notice.

14. This objection therefore fails.

(ii) The Address of the Leaseholder

15. A further requirement of section 22(2)(a) is that the notice must "specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which any person on whom the notice is served may serve notices.... on him..."

16. In this particular case the notice specified at the end:

"Signed by Lianne Marie Barrett

Tenant of flat 104" and

"Signed Hayley Irving

Tenant of flat 205."

17. The point taken by Mr Graeme in this context is two fold. First of all, he says that "flat 104" and "flat 205" are not proper addresses for the purposes of the 1987 Act. Secondly, he says that the signature of Hayley Irving was not a proper signature of the tenant because the tenant as far as he was concerned was Miss Hayley Bennett (Mrs Irving's maiden name). Also so far as Lianne Marie Barrett is concerned, he says that in breach of provisions within the lease, his company as landlord (the first Respondent) had not had produced to it the relevant assignment or transfer document evidencing the purchase. He moreover points out that registration of the assignment did not take place until many months afterwards.

18. So far as the requirement of a statement of the address is concerned, the Tribunal again considers it unreal to suggest that the requirement of the Act has not here been satisfied. There are only 6 flats in this block and Mr Graeme owns 4 out of the 6. He knew perfectly well that the two other leaseholders were in dispute with him and that the two flats which he did not own were flats 104 and 205. The full address of 11 Warren Road is stated within the body of the notice and the Tribunal is satisfied that the statement of the flat numbers read in the context of that notice and the factual matrix existing in this case are such that the requirements of the Act have been complied with. Equally, the fact that notice of assignment may or may not have been supplied to the landlord (there was in fact a factual dispute about this) or that registration was delayed, does not in the view of the Tribunal, render in this case Miss Barrett, any less "a tenant" for the purposes of the Act. Similar considerations apply in respect of the use of Mrs Irving's married as opposed to maiden name. Again, a copy of the marriage

certificate was indeed supplied to the landlord through Mr Graeme, although he contended that its contents were illegible to him. Once again, it does not seem to the Tribunal that this objection renders Mrs Irving any less "a tenant" for the purposes of the Act and for the purposes of serving a valid notice. This objection to the validity of the notice is therefore further rejected.

(iii) and (iv) Mis-spelling of "The Landlord and Tenant Act 1987" and "the reference to Land Valuation Tribunal" rather than "Leasehold Valuation Tribunal"

19. The third and fourth objections raised by Mr Graeme on behalf of the Respondents can be taken together, and are of a similar kind to the first objection. That is to say that there have been typographical or other similar errors in respect of matters required by the 1987 Act, and these errors are fatal, so Mr Graeme contends, to the validity of the notice. Section 22(2)(b) requires that the notice must state that the tenant intends to make an application for an order under section 24 to be made by a Leasehold Valuation Tribunal.... In fact the notice relied upon in this case has a stray "s" on the end of the word "Tenant" in the title of the 1987 Act, and refers to an intention to apply to the "Land Valuation Tribunal" for the appointment of the manager rather than the "Leasehold Valuation Tribunal".

20. Both these objections fail so far as the Tribunal is concerned. So far as the Tribunal is concerned the stray "s" on the end of the word "Tenant", does not render the notice invalid and the words used are a sufficient description of the Act relied upon by reference to the material within the notice and the factual matrix surrounding the service of the notice. Further and for the same reasons, the Tribunal is satisfied that the reference to "Land" rather than "Leasehold" by way of reference to the Leasehold Valuation Tribunal was a sufficient description of the Tribunal, particularly since the Tribunal is referred to later on in the

notice as the "LVT" which is the common abbreviated form given to the title of this Tribunal.

21. Mr Graeme also suggests that since the sub-paragraph referred to also requires that the notice should state that no such application will be made if certain requirements given in the notice are complied with, there is another failure. That is that the requirements for the purposes of the Act are not sufficiently stated. In fact the notice states that an application will be made "unless a satisfactory reply is received..." Mr Graeme asserts that it is not a question whether or not the Applicant's are satisfied with the reply. The Tribunal is satisfied for reasons which shall be expanded upon below, that sufficient information is given in the notice as to the grounds for making the application. Whether any of the matters raised therein are capable of remedy, and whether if they were, they were indeed so remedied are indeed matters for the Tribunal, and the manner in which the position is stated in the notice does not in the Tribunal's view invalidate the notice itself.

(v) The Grounds as Stated in the Notice

22. The fifth objection taken by Mr Graeme to the notice referred to the requirement under section 22(2)(c) to the effect that the notice must "... specify the grounds on which the Tribunal would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds".

23 There are in fact three paragraph headings in the notice indicating the grounds upon which an application would be brought. The first of these grounds is that there has been a demand, and there is likely to be a demand, for unreasonable service charges. This is expanded, and it is said, (and the Tribunal paraphrases), that all the work has been allocated to "Facility Services", which the Applicants contended was the trading name of a firm appointed as agents for the RTM Company but which was in fact controlled by Mr Graeme. The notice asserted that

that entity has "a reputation for poor work and high charges and it is likely that this will increase the service charge." It also complains that Mr Graeme himself, the leaseholder of 3 of the flats in 2007, had not paid any service charges which in turn had increased the charge for other flats. The second ground for complaint and an application for an order, is that Mr Graeme had subjected the tenants and their sub-tenants to "sustained intimidation" in breach of the provision of the Code of Practice. It is fair to say that the particular Code of Practice referred to or provision relied upon has not been identified. Thirdly and lastly, it is contended (hoisting the words from the 1987 Act) that "circumstances exist which make it just and convenient for the order to be made". This contention is expanded upon by saying that there had been historical behaviour by Mr Graeme, (two County Court appearances where the Court found in favour of the Applicant, and an appearance at the LVT where he was compelled to consent to an order on unfavourable terms to him – and which he subsequently failed to comply with) all of which pointed towards it making it just and convenient for a manager to be appointed.

24. The objections raised in respect of these grounds appear to be two-fold so far as Mr Graeme on behalf of the Respondents is concerned. Firstly, he says that the matters complained of are capable of being remedied, and insufficient time (7 days) has been given for the matters to be remedied. However, taking the grounds as stated generally, the Tribunal is of the view that they are essentially referring to historical behaviour and fear for the future, which are not really capable of remedy as far as they are concerned. Secondly, Mr Graeme complains that no evidence is put forward in the notice to confirm that he owes any service charges or that he has used intimidation or that there is a legitimate fear that his past conduct of the management of the property through the RTM or otherwise has indeed been wanting, such as to make it just and convenient for the Tribunal to make an order. So far as this objection is concerned, the Tribunal takes the view that it is not for the Applicants to set out in detail their evidence in the context of a

notice of this kind. The notice otherwise, certainly in a case like this, would have been very voluminous indeed. To comply with the Act, the Tribunal is satisfied grounds have been sufficiently stated so as to put the landlord on notice of those matters in general terms which are complained of. Given that they are in the main irremediable so far as the Applicants are concerned, the generality of the notice is in the Tribunals' view unobjectionable and not such as to invalidate the notice. Of course, the mere assertion of these matters does not establish them, and they would have to be demonstrated by appropriate evidence before the Tribunal before any such order were made. However, as indicated, the view of the Tribunal is that a statement of all of that evidence is not what is required within the body of the statutory notice. That evidence is material to be put before the Tribunal at the hearing and upon the basis of which the Tribunal will consider whether or not an order should be made. This objection therefore is also no sustained.

(vii) Statutory Information

25. Mr Graeme's seventh and final objection to the notice is that there is a requirement in section 22 for the notice to contain any information as may be prescribed by the Secretary of State by regulations or otherwise. He leaves it to the Tribunal to decide whether or not there has been a failure in this regard. The Tribunal is satisfied that there has been no such failure.

26. For the reasons set out above, the Tribunal is satisfied that the section 22 notice in this case is a valid section 22 notice for the purposes of the Act.

THE APPLICATION FOR APPOINTMENT OF A MANAGER

27. As mentioned in the introductory paragraphs to this Decision, after discussion with the parties it was agreed that the issues for the Tribunal were essentially (a) was the Tribunal satisfied on the evidence and within the meaning of the Act that it was appropriate to appoint a manager? - and (b) if so satisfied, was the individual proposed by the Applicants a suitable person in the view of the Tribunal? The Tribunal proposes to deal with these matters in turn.

28. Mr Graeme has twice before been removed from involvement in the management of these flats. The then leaseholders of Flats 204 and 205 brought an action in the Bournemouth County Court in 1995. The action was settled by a consent order which required Mr Graeme to appoint the firm of Rebbecks Brothers to undertake the management of the building as well as more than halving the service charges paid by the leaseholders for the years 93/94 and 94/95 and requiring Mr Graeme to pay them compensation. He was also ordered not to interfere with the management nor tender for cleaning contracts without the Claimant leaseholders' written consent so long as both resided there.

29. By 2002 Rebbecks no longer managed the property and Mr Graeme had resumed control. The circumstances in which this happened was the subject of disputed evidence. However, in 2006 an application under S24 of the LTA 1987 by the then leaseholders of Flats 104, 204 and 205 was heard by a Leasehold Valuation Tribunal. The upshot was a further consent order under which a Mr Andrew Taylor of Bourne Estates Ltd was appointed manager of the block. In addition, lease variations to permit sub-letting were agreed and Mr Graeme abandoned claims to service charges and administration fees he claimed had accrued since 2002 in the sums of £26,600.68 against flat 104 and £46,788.68 against flat 205.

30. By early 2008 however Mr Graeme was back in control. Despite an apparent agreement between the leaseholders of the three flats referred to above never to sell to him, he acquired flat 204. His explanation of how this came about was that a Mr Pitkin, having bought the flat, became unhappy with the attitudes of the Applicants, and as a favour Mr Graeme bought the flat from him on the same day that he completed the purchase - at the same price as paid by Mr Pitkin, and he also paid all his costs. This same Mr Pitkin had suggested, whilst in the process of buying, the formation of a Right to Manage Company, under the provisions of the Commonhold and Leasehold Reform Act 2002. Mr Graeme, now the leaseholder of four out of the six flats in the building, followed up on this, and formed WRACII Ltd, with himself as Director and owner of the majority of the shares. His explanation was viewed with some circumspection by the Tribunal, and it was noted that his actions had allowed him to use legislation designed to enable leaseholders to take over the management of their flats from their landlords, to bring the Management Order to an end, and to resume control himself either directly, (as up till now), or indirectly, through appointing managing agents of his own choosing, as he did initially.

31. Putting the matter shortly, the Tribunal is satisfied that this is indeed an appropriate case for the appointment of a Manager under the provisions of section 24 of the 1987 Act. It seemed to the Tribunal overwhelmingly to be the case on the evidence before the Tribunal that the relationship between Mr Graeme on behalf of the RTM Company or its appointed agents on the one hand, and the Applicants on the other, had irrevocably broken down, to the detriment of the management of this property. Further, the Tribunal was satisfied that grounds had been made out on the evidence by the Applicants such as to make it "just and convenient" for an order to be made. The main grounds for the appointment fall within section 24(2)(a) (breach of obligations to the tenant), section 24(2)(a)(b) (charging of unreasonable service charges) and section 24(b) ("other circumstances exist to make it just and

convenient for the order to be made"). Particular examples from the evidence falling within these sub-paragraphs are set out below.

32. First, the Tribunal was satisfied that on more than one occasion Mr Graeme through the second named Respondent had made excessive service charges against the Applicants which could not be justified on the evidence. The Applicants pointed out that the final account of a firm of managing agents called Rebbeck Brothers dated 8 April 2003 showed management fees outstanding in the sum of £663.88. However, an account prepared by accountants instructed and informed by Mr Graeme showed for that year outstanding managing agents fees for £4,646, after agents appointed by Mr Graeme had taken over management of the building. Moreover, in February and May 2006 applications for payment were made by Facility Services (an entity acting as agents for the first named Respondent) in the sums of £26,600.68 (flat 104) and £46,788.68 (flat 205) – as referred to above. These are alarmingly high sums and when asked by the Tribunal how they could be justified, Mr Graeme informed the Tribunal that the large sums accumulated by way of interest and other administrative charges. No particularisation was given in this regard, and the Tribunal was not satisfied that these sums were due or claimable at all – certainly they were not made out before this Tribunal, an in any event had apparently been agreed to be abandoned by Mr Graeme before a previous Tribunal. Whether or not this was the case, being presented with such invoices, so the Tribunal was informed by the Applicant, was extremely unsettling for the Applicants (to express the position mildly) and the Tribunal accepted the Applicants' evidence in this regard.

33. In addition, as an indication of how Mr Graeme had a tendency on behalf of the Respondents to demand inflated sums of this kind, he had prepared for the benefit of the Tribunal a costs summary indicating the costs he wished to claim against the Applicants for the period from the end of April 2009 until the date of the hearing (under 4 months). These costs exceeded £30,000 in all. The costs referable to the preparation

that his submission on behalf of the Respondents in these proceedings alone exceeded £11,000, which amounts to a rate of reward which would be welcomed in the offices of most city solicitors. Mr Graeme told the Tribunal that although he had a degree in law and accountancy from the Bournemouth University, and a qualification in hotel catering, he had never in fact qualified professionally or practiced as a lawyer.

34. There were also examples of Mr Graeme seeking to recover costs incurred by the Right to Manage Company (the second named Respondent) as service charges from the Applicants, who where of course non-participating leaseholders in the formation of that RTM. These included the initial establishment costs of the company, its accounts and taxation issues, and Directors' insurance.

35. Furthermore, there was evidence from the Applicants, which the Tribunal accepted, that Mr Graeme policed the forecourt of the building and clamped or caused to be clamped the wheels of vehicles parked in that forecourt for however short a period of time, and without attempts to obtain an explanation. Charges for these "services" would then be added to the service charge account.

36. Yet further the Applicants gave evidence to the Tribunal, again accepted by the Tribunal, that the Respondents through Mr Graeme would repeatedly serve section 146 notices threatening forfeiture of the leases for trivial breaches or alleged breaches of covenant. An example of this was that an entrance mat was placed outside the door of one of the flats not owned by Mr Graeme, and which he deemed to be a "trip hazard". A section 146 notice was served using this breach as a basis for forfeiture of the lease.

37. Mr Graeme considered himself to be a sufficiently qualified person to conduct the management of the building. However, when the proposed manager was being questioned by the Tribunal it became apparent that Mr Graeme had no knowledge of the RICS Code of Practice in respect

of management of property, and gratefully accepted information supplied by the Tribunal in respect of the existence of this code and the central part played by it as a guide used by professional managers.

38. A further feature of Mr Graeme's proposed management of this property which drives the Tribunal to consider that it is just and convenient for a management order to be made is what the Tribunal considers to be an unfortunate tendency to pedantry which renders him poorly suited to carry out this duty. An example of this is that he repeatedly asserted to the Tribunal that he had not himself previously paid service charges to the LVT appointed Manager, as a leaseholder of initially 3 and then 4 of the flats at the property, because he had never been presented with a service charge invoice. This appeared to be curious to the Tribunal given that there had been demands made to the other leaseholders by the Manager's agents prior to the RTM taking over. Ultimately, it transpired in the course of the evidence, that such invoices had indeed been served upon Mr Graeme, but that he had refused to recognise them as invoices because his surname "Graeme" had been spelt "Graham". Further, he told the Tribunal that as a result of his accountancy learning, he considered that there was information which should have been included in the invoices which prevented them properly being described as invoices. He further asserted that although he was the leaseholder of 3 (and then 4) of the flats, the self-same invoice should have been sent to him three and four times over at the individual flats rather than collectively to one address, in the absence of which procedure he would not recognise them.

39. For all the reasons listed above, the Tribunal was quite satisfied that on the evidence, and the circumstances in this case, render it just and convenient for the purposes of the 1987 Act to appoint a Manager, and the Tribunal is minded so to do.

IS THE PROPOSED MANAGER SUITABLE?

40. The manager proposed by the Applicants is Mr Peter Gordon May FRICS. Mr May is the principal of Minster Property Management Limited, which is a company of managing agents based in Wimborne, not far from the property. Although the company itself was established only in 2008 Mr May (who would be the Tribunal appointed manager) qualified as a surveyor in 1983 and became a Fellow of the Royal Institution for Chartered Surveyors in 1988. As well as being a Fellow of the Royal Institution he has a degree in estate management and long experience in general practice in managing both commercial and residential property. He has substantial support staff, adequate insurance and his company currently manages over 1,000 flats, largely blocks of flats. There is provision for out of office contact and he has a tried and tested database of experienced and reliable local contractors. He showed the Tribunal significant printed material relating to his company's practice and charging out rates, and he gave evidence to the Tribunal that he does indeed take a commission of 5% from brokers with whom he places insurance business. Mr Graeme in subsequent written submissions to the Tribunal points out that this fact does not appear printed in the literature relating to his practice, and on this basis he has dubbed Mr May guilty of "criminal offences" - which is again so far as the Tribunal is concerned, indicative of some of the attitude rendering Mr Graeme himself inappropriate to act as a manager.

41. For the reasons indicated above, the Tribunal is satisfied that Mr May is a suitable candidate to act as a Tribunal appointed manager and receiver in this case and it is ordered that he is so appointed for a period of 2 years from the date of this order, and on the terms more specifically appearing in the management order appended to this decision.

THE CLAIM FOR SERVICE CHARGES TRANSFERRED FROM THE COUNTY COURT

42. The second main aspect of the matters before the Tribunal was, as mentioned above, the transferred claim of the second named Respondent against the second named applicant (namely Miss Hayley Honour Bennett – her maiden name) which claim was referred to the Tribunal by order of the County Court dated 16 April 2009 and drawn on 27 April 2009. The claim form in respect of that matter is at page 18 of the Applicants' bundle and relates to alleged arrears of service charges for the period 15 March 2008 to 31 March 2009 in the sum of £1,105 and administration charges and debt recovery fees in the sums of £80 and £150 respectively. Those service charges are replicated in an invoice dated 11 August 2008 appearing at page 476 of the Respondents' bundle and they amount to 17% (the percentage contribution provided for in Mrs Irving's lease) of total projected expenditure for that service charge period of £6,500. That £6,500 is particularised in the estimated budget which appears at page 477 of the Respondents' bundle. The Tribunal heard evidence from both parties in relation to the particular sums set out in that budget and it is proposed to summarise the evidence from both sides and then to give the Tribunal's view in relation to each matter.

43. The first item claimed under the service charges is an item in respect of management fees including VAT of £1,200. This amounts to approximately £200 inclusive of VAT for each unit (although the contributions vary somewhat). The Tribunal considers this to be on the high side for relatively modest flats of this kind in a converted building. Interestingly, the previous managing agents (appointed by Mr Graeme himself on behalf of WRAC 11 Limited) namely Property Management Solutions (of which the director is Paul Mallorie) had charged £125 plus VAT per unit (see pages 170 & 171) during the previous year 2008. This latter figure is much more in keeping with the Tribunal's experience and consistent with the independent evidence before the

Tribunal. The Tribunal therefore takes the view that the reasonable figure for management should be £125 plus VAT which equals £143.75. Given that there are 6 flats the overall charge therefore, inclusive of VAT for management should be £862.50.

44. The next item listed is that of building insurance premium in the sum of £1,000. This sum was not disputed and is allowed in full.

45. The next item claimed by the second Respondent is a sum of £250 for "directors' insurance premiums". This sum was accepted by Mr Graeme not to be recoverable under the provisions of the lease, but he contended that it could or should be recoverable because certain costs had to be incurred in establishing the RTM Company as a requirement of the Commonhold and Leasehold Reform Act 2002, and those costs, so he told the Tribunal, are attributable to the tenants. He was unable to point to such statutory provision as authorising such recovery. The sum was challenged by the Applicants, and the Tribunal considers that since there is no provision for recovery of a sum of this kind as a service charge in the lease, and it is not in fact so recoverable, at any rate as a service charge. This sum is disallowed by the Tribunal.

46. A sum of £1,000 has been included in the budget for minor repairs. Mr Graeme told the Tribunal that this figure was by way of contingency. Leaving aside for present purposes whether there is any entitlement to a contingency figure under the lease (about which there seemed to be some debate) in fact, nothing of any significance was spent on the property during the service charge period in issue and the Tribunal would not have expected more than about £500 to have been collected in this regard. As it happens, there was some evidence from Mr May (the Tribunal appointed manager) about this, because he was taken through the budget in the context of his proposed duties, and he too told the Tribunal that this was rather more than he would have expected, especially given the contingency sum, and the fact that very little had been done in recent years by way of minor repairs. Doing the

best it can the Tribunal considers that £500 would be a reasonable sum in this regard.

47. A sum of £600 for the year has been claimed for cleaning. The evidence in this regard was, from the Applicants, that in fact the property both internally in the common parts and externally was not well looked after. Mr Irving said that the interior was dusty, dingy and had mud and leaves internally. The Applicants also told the Tribunal that the next item on the list of window cleaning in the sum of £200 was excessive because the windows had not been cleaned for a long time and there were relatively few windows in any event. This work, so they told the Tribunal, is carried out by Mr Graeme's own parents, and, they inferred, this was another reason why the sum was higher than it should be. Mr Graeme on the other hand told the Tribunal that his parents attend both to clean the interior common parts and the windows about once a month, and they are there for about 3-4 hours (this includes some other work mentioned below) and that both the charge for internal cleaning and the window cleaning was reasonable.

48. The Tribunal found the evidence of the Applicants more persuasive in this regard than that on behalf of the Respondent. A reasonable sum for this work should however be allowed and again, doing the best it can the Tribunal would allow an overall charge for the cleaning of the interior common parts and the windows in the sum of £500 (which amounts to £41.67 per month).

49. The next disputed item was that of £300 for ground maintenance. The evidence from Mr Graeme was that the maintenance amounted to the sweeping of the forecourt and side path leading to the wheelie bins by his father and mother. He added that the 3-4 hours of which he had spoken under the previous heads (cleaning of common parts and windows) would have included this work too. However the £300 broke down as to £120 for this cleaning or sweeping and the other £180 was his charge for expenses incurred in clamping various cars during the

course of the year. He was unable to demonstrate to the satisfaction of the Tribunal that these charges are recoverable as a service charge under any particular provision in the lease and this aspect is disallowed. £120 is therefore allowed under this head.

50. A sum of £200 for electricity charges was claimed and not disputed and is allowed in full.

51. The next matter claimed for was accountancy and company fees of £250. In fact this seemed to have been somewhat understated because the Tribunal was informed by Mr Graeme that it related to the professional fees of Messrs Brett Pittwood, and the invoice in this regard was at page 199 in the bundle. However, the narrative in this fee note is to the effect that the fees were incurred for preparation of the accounts of the RTM Company (the second named Respondent) in accordance with Companies Act legislation, and assistance in preparation of the companies corporation tax returns for the period from 30 May 2007 to 31 May 2008. When asked to explain how or why accountancy and company fees incurred by the RTM Company were payable as part of the service charge account under the lease, Mr Graeme took the Tribunal to the Seventh Schedule of the lease which entitles the landlord under the lease to "appoint such professionally qualified persons as may be necessary to act as surveyors, agents, accountants or auditors for the landlord... or other personnel as may be necessary to carry out any of its obligations under the provisions hereof".

52. Whilst the Tribunal well understands that this may be a charge capable of being levied by reference to the landlord under the lease carrying out landlord's covenants under that lease, the view of the Tribunal is that it does not cover the company expenses of the RTM Company, particularly given that Mrs Irving was not a participating tenant in the formation of that company. These sums are disallowed by the Tribunal as a service charge.

53. The final two items claimed are £1,000 as a "contingency" and a further £500 as part of the "sinking fund". So far as the contingency sum is concerned, for the reasons indicated above, the Tribunal considers this sum is too high and in some respects partly duplicative of the £1,000 claimed for "repairs" (in fact reduced by the Tribunal to £500); nothing was put forward on behalf of the Respondents as requiring urgent attention in that year and the Tribunal considers that this sum is not justified and should be deleted. So far as the sinking fund is concerned, Mr Graeme was asked by the Tribunal to point to the provision in the lease providing for the setting up of a sinking fund. He initially told the Tribunal that it was provided for by a Deed of Variation entered into by the parties appearing at page 128 in the bundle. However, it was thereafter conceded that this Deed had been revoked and superseded by the Court Order appearing at page 109 in the Bundle. Mr Graeme then reverted to the terms of the lease and argued that a sinking fund is provided for in Schedule 5 to the lease at paragraph 28(c) (page 40N in the bundle) which states that the tenant shall pay "such sum of sums that may be demanded by the landlord during the course of any year as an emergency payment in the event of the landlord's existing funds being insufficient to cover any particular item of actual or anticipated expenditure during the course of any individual year".

54. So far as the Tribunal is concerned that provision clearly deals with emergency scenarios for individual items of expenditure during the service charge year and is not a general permission to collect in sums by way of contingency or otherwise in a sinking fund. Mr Graeme otherwise relied upon sub-paragraph (f) of the Seventh Schedule to the lease and in particular sub-paragraph (f) (iv) which provides for the collecting in of sums:

"In providing such service facilities and amenities or in carrying out works or otherwise incurring expenditure as the landlord shall in its

absolute discretion deem necessary for the general benefit of the building and its tenants whether or not the landlord is covenanted to incur such expenditure or provide such service facilities and amenities or carrying out such works".

55. Once again, although this a provision for a collecting in of sums on account of expenditure undertaken on services etc., not previously provided for, no such "extras" have been deemed necessary, nor in the view of the Tribunal is this a general discretion to build up a sinking fund cumulatively, year on year. The Tribunal is not persuaded that there is indeed provision for a sinking fund in this lease (provisions in this regard are usually explicit in relation to the creation of such a fund) and this sum is disallowed. Even if the Tribunal is wrong in this regard, on the facts, the Tribunal does not consider the sum necessary or reasonable for the purposes of the Act given that a sum of £500 has already been collected in under the heading of "repairs" during that year.

56. The upshot of the above findings is that sums totalling £3,182.50 are allowed as reasonable under the Act by the Tribunal for this service charge year. Mrs Irving's lease provides for her to pay 17% of this figure, which amounts to £541.03. It is conceded by the Respondent in the claim for payment or invoice copied at page 154 in the bundle that £152.99 was paid by Mrs Irving during that year (this appears to refer to insurance) which would leave a balance due of £388.03. The whole of this case has been referred to the Tribunal by the County Court, and the Tribunal directs that this balance due and owing for that year should be paid directly to the Tribunal appointed Manager and Receiver referred to above, namely Mr May, to be held and utilised by him in the management of the property.

SECTION 20C APPLICATION

57. As has been indicated above, the Applicants seek a direction to the effect that no costs referable to these proceedings should be recoverable against them as part of the service charge. Mr Graeme on the other hand argued that he has spent many hours preparing the 400 pages or so of the bundle, documentation which was necessary because, in his contention, the application was insufficiently specific and unsupported by evidence. He told the Tribunal that he considered that the Applicants "have it in for me" and that they generally behaved in a vexatious fashion. Effectively therefore the Applicants invited the Tribunal to make an order under Section 20C, and the Respondents argued that no such direction should be given and that moreover the Tribunal should make a determination that approximately £30,000 worth of costs levied by Mr Graeme on behalf of one or other of the Respondents should indeed be recoverable as a service charge. Alternatively all or part of that sum should be recoverable under Regulation 11 of the Leasehold Valuation (Procedure) (Regulations).

58. The Tribunal considers that so far as the application for appointment of the manager is concerned, the application was wrongly resisted and the applicants have been successful in the application. So far as the Section 27A claim made by the Respondent against the second named Applicant, the Respondent failed to persuade the Tribunal that more than about half of the charges are in fact payable. The Tribunal notes that much of the time spent during the hearing was devoted to examination of the alleged defects in the Section 22 notice, several of which challenges were misconceived. The claim so far as the Respondents are concerned for recovery of costs fails in any event on the merits for the reasons indicated, and moreover the Tribunal is not persuaded that these costs incurred by Mr Graeme himself on behalf of the Respondents are recoverable as a service charge under the lease in any event. He sought to rely upon provisions in the Seventh Schedule and in particular sub-paragraphs (f) (ii) and (g). However,

both these provisions relate to the payment of the proper fees of the surveyor or agent appointed by the landlord in connection with the carrying of, or the prospective carrying out of, any of the landlord's obligations referred to in the lease ((f) (ii)) or "the appointment of such professionally qualified persons as may be necessary to act as surveyors, agents, accountants or auditors for the landlord... or other personnel as may be necessary to carry out any of its obligations under the provisions hereof". Neither of these provisions relate to the recovery of costs for legal proceedings or proceedings before the Tribunal and in the main, although not exclusively, they refer to the costs of professional persons, into which category Mr Graeme does not fall.

59. In all the circumstances the Tribunal is of the view that these costs before the Tribunal are wholly excessive, and in any event irrecoverable as a service charge under the terms of the lease. If the Tribunal should be wrong in this regard, the Tribunal considers it is appropriate to make, and does make, an order under Section 20C precluding the recovery of any such costs as part of the service charge, given that the Applicants were compelled to bring this application to the Tribunal and have in large measure achieved success in both the Section 24 application and their resistance to the Section 27A claim. No other order for costs is made in favour of either of the Applicants or the Respondents.

CONCLUSION

60. For the reasons indicated above a Management Order is made in this case in the terms of the order accompanying this Decision. It is determined that a balance of £388.03 is payable by the second named Applicant by way of service charges for the year in question and that this sum should be paid directly to the Tribunal appointed Manager for the purposes of managing the building. A Section 20 direction is given in favour of the Applicants to the effect that no part of the cost of these

proceedings should be recoverable by way of addition to the service charge account.

Legal Chairman: S. Shaw 

Dated: 7th December 2009

MANAGEMENT ORDER

ORDER UNDER SECTION 24
OF THE LANDLORD AND TENANT ACT 1987

1. Peter Gordon May FRICS IRPM ("the Manager") of Minster Property Management Limited, 7 The Square, Wimborne, Dorset BH21 1JA, is hereby appointed the Manager of 11 Warren Road, Bournemouth, Dorset BH4 8EZ ("the Property") with effect from 1st December 2009 for a period of two years or until further order in the interim.

2. The Manager shall manage the Property in accordance with the terms of the leases, the Service Charge Residential Management Code approved by the Secretary of State, and the relevant legislation, and in particular shall carry out all the functions of the landlord within the terms of the leases of the flats within the Property and in accordance with the "Management Services" document supplied by the Manager to the Tribunal and appended to this Order.

3. The Manager shall be entitled to remuneration as listed at page 8 of the "Guide for Property Owners" also supplied by the Manager to the Tribunal and appended hereto, which remuneration shall be recoverable as if it were a service charge.

4. The Manager shall be entitled in the course of carrying out his duties under this order, to employ such accountants, solicitors and/or other professional persons as he may deem fit, and to charge their fees to the service charge account.

5. In the event of monies available in the service charge account being insufficient to enable the Manager properly to discharge his duties and to manage the Property, he shall be entitled to borrow the necessary funds and to charge the costs, including such borrowings, to the service charge account.

6. For the avoidance of doubt, the Manager shall be entitled to appoint Minster Property Management Limited and the staff thereof to assist him insofar as may be necessary in the day to day management of the Property and any demands or notices or other documents issued in the name of that company shall be deemed to be demands notices etc given or made by the Manager. The Manager will however at all times remain personally responsible for the management of the Property for the purposes of this Order.

7. The Manager shall have liberty in accordance with section 24(4) of the Landlord and Tenant Act 1987 to apply to the Tribunal for further or other directions at any time during the subsistence of this Order.

Chairman: S. Shaw S.Shaw

Dated: 7th December 2009

Other Tribunal Members:

Mr P. Casey MRICS

Mr O. Miller BSc