



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **CAM/00KA/LAM/2013/0006**

**Property** : **Malzeard Court, Malzeard Road, Luton LU3  
1BN**

**Applicants (Tenants)** : **Stephen Shoemith and Nita Barna  
Shoemith**

**Respondent (1)  
Representative** : **Peak Holdings Ltd (Landlord)  
Mr Ian Bryan, Director of IB Management  
Services Ltd**

**Respondent (2)** : **The Long Leaseholders named in the  
Application**

**Date of Application** : **5<sup>th</sup> November 2013**

**Date of Hearing** : **3<sup>rd</sup> March 2014**

**Type of Application** : **To appoint a manager (Section 24(1)  
Landlord and Tenant Act 1987)**

**Tribunal** : **Judge JR Morris  
Miss M Henington BSc MRICS  
Mr PA Tunley**

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**DECISION**

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**Decision**

The Tribunal appoint James Shoemith as Manager for four years in accordance with the Order attached hereto.

## Reasons

### Application

1. On the 5<sup>th</sup> November 2013 the Applicants made an application to appoint a manager under Section 24(1) of the Landlord and Tenant Act 1987.

### The Law

**Note:** Since the 1<sup>st</sup> July 2013 the Leasehold Valuation Tribunal, with all its jurisdictions, has been subsumed into this Tribunal

2. Section 24:

- (1) *A leasehold valuation 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 [of the Act] applies -*
  - a) *such functions in connection with the management of the premises*
  - or
  - b) *such functions of a receiver*
  - or
  - c) *both as the Tribunal thinks fit.*
- (2) *A leasehold valuation Tribunal may make an order under this section in the following circumstances, namely-*
  - a) *where the Tribunal is satisfied-*
    - i) *that the landlord is either in breach of any obligations owed by him to the tenant under his tenancy and relating to the management of premises in question or any part of them (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*
    - (iii) *that it is just and convenient to make the order in all the circumstances*
  - (ab) *where the Tribunal is satisfied –*
    - (i) *that unreasonable service charges have been made or are proposed to be made and*
    - (ii) *that it is just and convenient to make the order in all the circumstances*
  - (ac) *where the Tribunal is satisfied-*
    - (i) *that the landlord has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under s87 of the Leasehold Reform, Housing and Urban Development Act 1993 (Codes Management Practice), and*
    - (ii) *that it is just and convenient to make the order in all the circumstances; or*

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

9. Where a tenant relies upon a Notice served under section 22 of the Act the Notice must:
- (a) specify the tenant's name and address for service of notices
  - (b) state that the tenant intends to make an application for an order under section 24 in respect of the subject property but will not do so if the landlord complies with the requirements specified
  - (c) specify the grounds on which the Tribunal would be asked to make an order and the matters that would be relied on by the tenant for establishing those grounds
  - (d) where matters are capable of being remedied by the landlord, require the landlord within a reasonable time specified in the notice to take such steps for the purpose of remedying them as are to be specified

### **The Lease**

12. A copy of the Lease for Flat 18 was provided which was agreed to be common to all the residential properties of the Estate. The Lease is between the original Landlord (1) Marshall of Luton (Builders) Limited and the original Tenant (2) ----- Allison. The Lease is for 99 years for 25<sup>th</sup> December 1972 paying the yearly rents in the Schedule by half yearly instalments on the 25<sup>th</sup> December and 24<sup>th</sup> June in each year. The Schedule was missing from the Tribunal's copy and neither the Applicants nor the Respondent were able to provide a copy. In the Lease the Tenant is referred to as the Lessee and the Landlord as the Lessor.

13. The Lease contained the following provision in respect of insurance:

Clause 1 – the insurance premium is to be a part of the rent:

*By way of further rent a yearly sum bearing a fair proportion ... to the sum which the Lessor shall from time to time pay by way of premium including any increased premium payable by reason of any act or omission of the Lessee for keeping the demised premises insured against loss or damage by fire storm and tempest under its covenant in that behalf hereinafter contained and said further rent to be paid on the date for payment of ground rent next following the date of the payment of such premium.*

Clause 5 (3) – The Landlord is to insure the premises:

*To keep insured at all times throughout the term the building of which the demised premises form part against loss or damage by fire storm or tempest in an insurance Office of repute to the full value thereof and to make all payments necessary of that purpose within seven days of the same becoming payable and to produce to the Lessee on demand the policy of insurance and the receipt for each such payment*

14. The Lease contained the following provision in respect of repair and service charge:

Clause 3 (6) - The Tenant covenants with the Landlord:

*At all times during the said term to contribute a rateable or due proportion of the expense of making repairing maintaining supporting rebuilding painting and cleansing all ways staircases passageways pathways sewers drainpipes watercourses water pipes cisterns gutters party walls part structures fences easements and appurtenances belonging to or used or capable of being used by the Lessee in common with the Lessor or the Lessees or occupiers of the premises near to or adjoining the demised premises or of which the demised premises form part such proportion in the case of difference to be settled by the Surveyor for the time being of the Lessor whose decision shall be binding and to keep the Lessor indemnified against all costs and expenses as aforesaid.*

Clause 5 (4) – The Landlord covenants with the Tenant:

*On the Lessee duly paying his proportion of the costs thereof in accordance with the covenants on his part contained in Clause 3 (6) hereof the Lessor will at all times during the said term repair maintain and keep in good order repair and condition the matters referred to therein*

### **The Section 22 Notice**

15. The Applicants had served a Notice under section 22 of the Landlord and Tenant Act 1987 on the 8<sup>th</sup> July 2013. The abbreviated contents of the Notice were as follows;

1. The Landlord was in breach of its obligations under the Lease. These were detailed in the Section 22 Notice and related to the repair and management of the Property.
2. Unreasonable service charges had been made
3. The Landlord had failed to comply with the relevant Codes of Practice approved by the Secretary of State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993
4. Other circumstances make it just and convenient for the order to be made

16. The following table sets out the items of disrepair for which action was sought. Further details which formed the basis of the Applicants' case were provided in Schedules to the Section 22 Notice.

	<b>Action Required</b>	<b>Time frame</b>
1.	A regular month by month 1. Cleaning of the stairwells and removal of litter 2. Sweeping the communal car parks	To commence within 2 months of the Notice

	3. Seasonal cutting of grass and tree branches	
2.	Resurfacing of the driveway and car park which are adjacent to the main block	2 months from the date of the notice as a section 20 consultation is unlikely to be required as the cost is unlikely to be over £250 per flat
3.	Deeper drainage channels to be fitted in the car park	2 months from the date of the Notice as a section 20 consultation is unlikely to be required as the cost is unlikely to be over £250 per flat
4.	Guttering to be repaired/replaced	2 months of the Notice for the missing guttering over the car park area
5.	Installation of adequate lighting in driveway car park	2 months from the date of the Notice as a section 20 consultation is unlikely to be required as the cost is unlikely to be over £250 per flat
6.	Secure the Property against unauthorised access	2 months from the date of the Notice
7.	Relay paving slabs outside covered clothes drying area, cutting back tree roots where necessary	2 months from the date of the Notice
8.	Regular identification and carrying out of minor repairs	2 months from the date of the Notice
9.	Secure covered clothes drying area to prevent miss-use	2 months from the date of the Notice
10.	Proper management of the Property	Within 2 weeks of the Notice
11.	Justification of the charging of an insurance premium	Within 2 weeks of the Notice

### **The Inspection**

17. The Tribunal inspected the Property in the presence of Mr Stephen Shoesmith representing the Applicants, Mr James Shoesmith the prospective manager, and Mr Ian Bryan representing the Respondent.
18. The Property comprises two blocks of flats. The Front Block contains 4 flats and is situated at the entrance to the Property on Malzeard Road and the Main Block containing 10 flats is to the rear of the Property backing on to Studely Road. There is a driveway which is in fair condition for the entrance down to the Main Block in front of which is a Car Park. Off the driveway between the two Blocks is a Garage Block of 4 garages adjacent to which is a dilapidated Bin Store. The Car Park in front of the Main Block is in fair to poor condition. The drainage channel in front of the Main Block appeared to be blocked. The

Main Block is a detached Building. The passageways either side of the Block have been fenced. To the rear of the Main Block on Studely Road there is a grassed area which had been poorly maintained. A fridge had been deposited next to this area.

19. The Front Block is in fair condition. It has no internal common parts. It is a brick building with a flat roof with wooden fascia boards. There is a drying area to the rear, the paving slabs of which are uneven.
20. The Garage Block and adjacent bin store are not owned by the Respondent Landlord. A Land Registry Search carried out by the Applicants showed the garages to belong to Clear Capital LLC, a company incorporated in Delaware USA but with a contact address in the UK. The garages are let separately and are not part of the demise of any flat. The garages and bin store were in generally poor condition.
21. The Main Block is of brick under a pitched tile roof. It has three storeys and two common entrances. Between the entrances are 4 garages which, like the Garage Block belong to Clear Capital LLC. These garages are also let separately and are not part of the demise of any flat. At the end of the ground floor there is an undercroft which was intended for use as a drying area.
22. The external condition of the Main Block was generally fair to poor. The guttering was in need of repair or replacement and the soffits required redecorating. Parts showed signs of rot. The entrance door and side window on the ground floor, together with the windows on the first and second floors of each entrance hall, staircase and landing were in poor condition. The halls, staircases and landings themselves were utilitarian and appeared to be in fair structural condition although in need of cleaning. There were no emergency lights on the stairwells.

### **Attendance at the Hearing**

23. The Hearing was attended by Mr Stephen Shoesmith representing the Applicants (the Applicants' Representative), Mr James Shoesmith the prospective manager, Mr Stephen Shiebert, a witness for the Applicants and Tenant of Flat 12 and Mr Ian Bryan representing the Respondent (the Respondent's Representative). The Respondent is registered in the Isle of Man and IB Management Services Limited is the Respondent's representative in England.

### **Applicants' Case**

24. The Applicant submitted that the Respondent had not carried out the works required by the Section 22 Notice and therefore an order appointing a manager should be made.
25. The Applicants provided a draft Order the main points of which are as follows:
26. The appointment is to be for 4 years from 4th March 2014 to 3<sup>rd</sup> March 2018.

27. The duties are to manage the maintenance and repair of the Property by arranging:
- Cleaning of the internal common parts of the Main Block on a monthly basis
  - Grass cutting
  - Clearing of rubbish from the internal and external common parts
  - Payment of electricity bills for lighting of the common parts
28. The Manager is to bring the Property up to date with current Security, Health and Safety and Fire requirements.
29. The Manager is to arrange the following works:
- 1) Securing the covered drying area of the Main Block
  - 2) Securing the passageways either side of the Main Block
  - 3) Installing improved lighting for the common parts
  - 4) Installing remote control door locks on the front doors to the internal common parts of the Main Block
  - 5) Fencing the gardens at the rear of the Main Block in Studley Road
  - 6) Lopping or felling two trees in the driveway
  - 7) Demolition of the Main Block dustbin shed
  - 8) Installation of emergency lighting in the internal common parts of the Main Block
  - 9) Securing the perimeter of the property against intruders
30. The Manager may raise service charges as follows:
- By providing a draft budget for the first year as appended to this order;
  - By issuing an invoice for an Advance Payment of Service Charge based on each flat's due proportion of the budgeted expenditure to be paid within one calendar month or by equal monthly instalments over the financial year;
  - As soon as practicable at the end of each financial year the Manager shall prepare and have audited accounts. Where the advance payment exceeds expenditure the credit will be carried forward to the next year, where the expenditure exceeds the advance payment the Tenant will pay the balance as an Annual Payment within one calendar month.
31. The Manager's Remuneration is to be:
- £3,100.00 (£250.00 per year for each of the 10 flats in the main Block and £150 for each of the 4 flats in the Front Block);
  - £30.00 per visit for travelling costs;
  - £40.00 per hour for additional work resulting from non-payment of Advance or Annual Payment of Service Charges;
  - £40.00 per hour for any other work outside the scope of the Order.
32. The Tribunal questioned the Applicants' Representative and the Prospective Manager as to the wide ranging powers that were sought in particular the Tribunal commented that it was of the opinion that it could not re-write the Lease and could not make an Order that went outside what the Tenants might expect to be within the terms of the Lease.

33. The Prospective Manager stated that he had had a consultation to with a barrister who stated that there was authority that the legislative provisions were wide enough for the Tribunal to Order what it wished.
34. The Applicants' Representative highlighted a number of matters which were referred to in the section 22 Notice at Schedule A.
35. Firstly he said that a contractor was needed to clean, remove litter, discarded items and cut the grass. He said it would have been noted from the inspection that the property needed to have a cleaner for the internal parts and that the car park needed to be swept and the drains unblocked. He said that the undercroft for drying in the Main Block and surrounding area had been used for the depositing of discarded furniture, household goods, gas cylinders condoms, and needles. They had also been used for urination and had attracted rats. It was submitted that the only remedy was to employ a contractor on a monthly basis.
36. He identified a number of items of capital expenditure for repair. He said the car park in front of the Main Block needed resurfacing and the drains there needed to be replaced with deeper gullies. The guttering at the front of the Main Block needed to be repaired or replaced. The paving slabs are also uneven and need to be re-laid. The problem is largely due to tree roots which need to be cut back. In addition a number of minor repairs were identified such as broken glass in the communal doors of the Main Block.
37. He said that the lighting in the car park had been installed by the Tenants in 2006. However the lights installed were said to be of a domestic nature and more substantial fitments were needed. The internal lighting of the common parts also needed to be overhauled and emergency lighting installed.
38. He was concerned that the Property was not secure. He said that the Property had been used as a short cut to the town by those not resident at the Property. Action had been taken to prevent this by the erection of fencing either side of the Main Block. However its open access has meant that the communal areas have been used by drug dealers and prostitutes. This was particularly true of the undercroft or covered drying area at the Main Block which needed to be made secure.
39. He drew the tribunal's attention to Schedule B where there were a number of photographs to illustrate the condition of the property and problems referred to.
40. The Applicants' Representative referred to Schedule C of the Section 22 Notice where it was stated that in 2006 to 2007 a Right to Manage Company was started but failed because the Lease did not provide for advance payments of service charges and after the first year many of the Tenants refused to pay in advance. The managing agent for the Right to Manage Company was the Proposed Manager, Mr James Shoemith. In 2008 an attempt was made to buy the freehold but this failed because the Tenants would not pay the money. It was also stated at the Hearing that there was no provision in the Lease for payment of a Management Fee.



41. Reference was made to the management Fees which were as follows  
2009 £2,420.07  
2010 £0  
2011 £2,450.00  
2012 £1,976.06  
Nothing was spent on maintenance in 2009 or 2010; £109.06 was spent on sundry items in 2011 and £100.00 on maintenance in 2012. The Fee was mainly for arranging insurance and for paying the electricity.
42. No details of these Service Charges were provided but it was said that they were considered to be unreasonable.
43. Initially the Applicants had said that there was no authorisation to pay insurance under the Lease. At the hearing it was conceded that there were provisions for arranging insurance and to charge the premium.
44. The Applicants' Representative went on to say that complaints had been made to the Respondents and copies of letters sent by the Applicants were provided at Appendix D of the Section 22 Notice.
45. A list of the Tenants was provided. Only Flat 3 of the Front Block is owner occupied and only Flats 10 and 22 of the Main Block are owner occupied. Flats 4 and 8 of the Main Block are unoccupied and derelict as noted on the inspection.
46. Further to the point made above regarding the powers of the Tribunal the Applicants' Representative and the Proposed Manager submitted that they had sought to obtain the Appointment of a Manager as they did not think they would be able to obtain enough Tenants to support a variation of the Lease. A number of Tenants are prepared to support the Appointment of a Manager and letters from the Tenants of Flats 1, 3, 7, 12, 14, 20 and 22. It was also said that to try to enforce the Landlord's covenants under the Lease against the Respondent would be difficult as it was understood that it was an 'offshore Company'.
47. The Proposed Manager, Mr James Shoesmith, provided a written statement which he confirmed orally at the Hearing. He said that he was a Chartered Accountant and has managed a portfolio of 8 tenanted properties for the last 10 years and has co-managed a further 5 properties for the last 7 years. He said he is a member of the Residential Landlords Association and the National Landlords Association and attends the course and training that they provide.
48. He has also managed 127 Hatton Road, Bedford Middlesex for the last 11 years, which is a block of 12 flats, with a separate block of garages and communal gardens. In addition he said he had managed the property for 18 months in 2006 to 2007 under a Right to Manage arrangement. He said that all but one of the Tenants made substantial advance payments in order to undertake urgent repairs in the first year. In the second year over half the Tenants refused to make advance payments because it was said they were not in the Leases. Also he was advised that he was not able to enforce the non-

payment against the defaulting Tenant without the Landlord's consent, which was not forthcoming.

49. He said that he intended running the management through a limited company which would employ him. This would make the obtaining of indemnity insurance etc easier. The Tribunal pointed out that if appointed he would be appointed directly by the Tribunal. The company that employed him was not appointed. He acknowledged this.
50. He said that the apportionment for the last 20 to 30 years had been that the costs relating to each Block were divided equally between the flats in that Block. The costs relating to the driveway and the car park were divided equally between all 14 Tenants.
51. The Proposed Manger said that he had contacted a local agent who had said that the Property had too many existing and potential problems plus a lack of existing funds to resolve them for him to take it on. He thought a larger firm with more resources might be more suited.
52. Overall the Applicants submitted that the Respondent was in breach of Clause 3 (6) of the Lease by failing to keep the Property "in good order and condition".
53. The Tribunal commented that the Tribunal may be able to allow for advance payments and payment of the manager in the Order but the Lease would remain the guide for any other work. The tribunal considered that a manager could ensure that Health and Safety and Fire requirements (including the securing of the covered drying area) were met under the maintenance provisions including the installation of emergency lighting. Repairing the fences and lopping or other tree work where it was necessary for the maintenance of the Property was also within the Lease. However, it could not agree to the demolition of the bin store as it was believed to belong to Clear Capital LLC.
54. The Tribunal also considered that the charges proposed were high and that a management fee of £160.00 per unit plus VAT (if applicable) would be more reasonable. He agreed a lesser sum might be acceptable.

### **Respondent's Case**

55. Mr Bryan stated that IB Management Services Limited was not the Respondent's Managing Agent but represented the Respondent in England. Correspondence from IB Management Services on behalf of Peak Holding Limited was provided as follows:
56. A letter was provided from IB Management Services to Mr Shiebert dated 30<sup>th</sup> July 2013 requesting contact details of local builders, decorators, cleaning contractors, gardeners, building surveyors and managing agents.
57. A letter was provided from IB Management Services to the Applicants dated 19<sup>th</sup> August 2013 in response to the Section 22 Notice stating that quotations

were being obtained for internal and external cleaning and gardening services. A surveyor was also going to be instructed in respect of the car park, drains and gutters and down pipes, electrical installation and trees. The letter also asks how it is intended that the Property is to be secured against unauthorised access, particularly the covered drying area in the Main Block.

58. A letter was provided from IB Management Services dated 22<sup>nd</sup> October 2013 to the Applicants in response to their letter of 17<sup>th</sup> September 2013. The Applicants' letter referred to obtaining quotations for cleaning and gardening, security, discarded items, management, site visits, trees, replacement and improvements.
59. The Respondent's Representative stated that they had sought quotations but due to the abuse from the occupiers of the flats the contractors did not quote. In respect of security the fire risk assessment recommended that the stairwell entrances and the covered drying area should be secured. The external and internal light fittings should be replaced.
60. The Applicants had referred to antisocial behaviour such as drug dealing and abuse and prostitution at the Property which the police said they had insufficient officers to deal with. The Respondent's Representative said this was not something that they could do anything about. The passages either side of the Main Block had been fenced off.
62. The Applicants had complained that one of the Tenants had sub-let to a person who appeared to be running a scrap metal business from the flat. The Respondent's Representative said that if this was a sub tenant then it was for the Tenant to take action.
63. The Respondent's Representative noted that if a repair became uneconomic or impractical then the item may require to be replaced and a replacement might be an improvement e.g. upvc double glazed windows, where these did not greatly increase the cost. However he added that the only window frames for which the Landlord was liable were those in the common parts.
64. The Respondent's Representative stated at the Hearing that the main problem with carrying out any work at the Property was the lack of funds. It was left to the Landlord to carry out work and then because it appeared from the Lease that advance payments could not be obtained, reclaim the cost from the Tenants who did not pay promptly or in some cases at all. This meant there was little incentive to undertake and significant works.
65. The Respondent's Representative said that it was agreed that the Property was in poor condition but he did not concede that the Respondent Landlord was in breach. The condition was in part due to the sub-tenants and hence the Tenants. The Respondent did not object to the Appointment of a Manager for the period requested with regard to the provisions of Clauses (3(6) and 5(4)). However, the Respondent did object to the Manager being able to receive the ground rent or insurance premiums and having any authority in respect of the approval of lease transfers of lease extension and provided wording to be

added to the order to ensure these matters were excluded. The Applicants and their Proposed Manager agreed with the Respondent on this point.

## Decision

66. The Tribunal firstly considered whether an order to appoint a manager should be made. The Tribunal took account of what it had seen on the inspection and whether the condition of the Property was:
- a) as set out in the Notice served by Applicants under section 22 and
  - b) contrary to clause 5(4) of the Lease.
67. The Tribunal found as follows:
1. The internal common parts of the Main Block appeared not to have been cleaned for some considerable time, the external areas were poorly maintained with trees, plants, and grass overgrown, litter was also evident;
  2. The car park in front of the Main Block was in need of resurfacing;
  3. The electrical installation was in need of overhauling;
  4. The rainwater drains showed evidence of having been blocked and overflowing;
  5. The guttering on the Main Block was displaced and in need of repair;
  6. The slabs were uneven outside the covered drying area;
  7. Repairs were needed to the internal common parts.
66. The Landlord had been required to commence work on these items within 2 months of the Notice which was dated 8<sup>th</sup> July 2013. The Tribunal was of the opinion that this was a reasonable period of time. There was evidence that the Respondent's Representative had sought to obtain quotations for the cleaning. However on the 3<sup>rd</sup> March 2014 when the Tribunal inspected, the Property was as described in the Section 22 Notice. The Tribunal therefore found that the Landlord had not complied with the Notice.
67. The Tribunal considered whether this non-compliance amounted to a breach of the obligation owed by the Landlord to the Tenant under the Lease. The Tribunal referred to clause 5 (4) and found that the Landlord had not kept the Property *in good order repair and condition*. Therefore the Tribunal found that the Landlord Respondent was in breach of an obligation under the Lease.
68. The Tribunal then considered whether it was just and convenient to make an order. The Property appeared to have been deteriorating since 2005 as evidenced by a copy of the letter from the Applicants to IB Management Services dated 8<sup>th</sup> April 2005 in Appendix D of the Section 22 Notice. Certain of the works such as the need for the installation of emergency lighting and actions to be compliant with current health and safety and fire requirements and the need to take remedial action to prevent further damage to the property due to the displaced guttering were becoming urgent. The Tribunal took a purposive approach. To remedy the deterioration and secure the safety of the Property it was satisfied *that it is just and convenient to make the order in all the circumstances*.
69. No evidence was adduced that the service charges were unreasonable.

70. Secondly, the Tribunal being satisfied that an order to appoint a manager should be made, it considered whether Mr James Shoemith, the Proposed Manager, should be appointed. The Tribunal found that he had a professional qualification and experience and therefore should be aware of the standard required. It also found that he had experience of managing a similar Property for a number of years and in particular the Property for 18 months while it was under a Right to Manage. He was not able to continue for the same reason that the Landlord appears not to have undertaken works, namely not having funds in advance. Therefore the Tribunal accepted Mr James Shoemith as being a suitable manager of the Property.
71. Thirdly, the Tribunal considered what provisions should be included in the Order. The Tribunal was of the opinion that, whereas the Order should seek, in this case, to remedy the breach by the Landlord it should not re-write the Lease or impose on the Tenants liabilities which they would not have anticipated when signing the Lease. The Tribunal considered that the Order should give effect to the Lease, and provide the Manager appointed with the powers to carry out the task of remedying the mischief that had led to the Application (*Maunder Taylor v Blaquiere* [2003] 1 WLR 379)
72. The Tribunal identified and addressed three issues which had been raised with regard to the content of the Order. The first was that the Applicants wanted there to be a provision to enable the Manager to require the Tenants to make an advance payment based upon a budget. It was the inability to do this that had led to the failure of the Right to Manage Company and was probably the basis for the failure of the Landlord to carry out repairs.
73. The Tribunal found that the Service Charge provisions, although brief were broad. Clause 5(4) of the Lease required the Landlord to *repair maintain and keep in good order repair and condition the matters referred to* in Clause 3(6). Clause 3(6) listed a series of items of repair and maintenance in relation to which the Tenants were *At all times during the said term to contribute a rateable or due proportion of the expense*. It had always been assumed by the Landlord and Tenants that the work had to be done and paid for. The Tribunal was of the opinion that this was not the only interpretation.
74. In interpreting a Lease, Courts and Tribunals follow rules of construction. Amongst these is the *contra preferentem* rule which means that a term of the contract will be construed against (*contra*) the party putting the term forward (*preferentem*). Since leases are invariably drafted by landlords the terms are construed against the landlord. In the present case to interpret the clause as requiring the work to be done before being paid for has acted as a disadvantage to both Landlord and Tenant. An alternative interpretation is that as Clause 3(6) only requires the Tenant to contribute it does not preclude a payment in advance. Such payment in the present case would benefit the Tenants as it would ensure that funds were available to remedy the mischief of the neglected Property. The Tribunal therefore determined that it was not contrary to the Lease to include advance payments in the Order.

75. The Applicants in their submission appeared to be referring to the case of *Re Kings Gardens, West Lane, London NW6* [LVT/VOD/002/003/00 & LVT/AOM/002/016/99] in which it was determined that an advance payment could be required even though the Lease expressly required payment after completion of the work. However, the decision was not as contrary to the leases as might appear. The tribunal in the case was rationalising an anomalous situation of a block of flats where the old leases required payment after completion of the work and the new leases allowed for advance payment. The tribunal dealt with the mischief by requiring all tenants to make advance payments as being the most practical solution. In the present case the Tribunal is seeking to take a similarly pragmatic view.
76. The Tribunal noted at the end of Clause 3(6) the phrase that the Lessee is to *keep the Lessor indemnified against all costs and expenses as aforesaid*. The use of the word “indemnified” indicates payment after the event. However, its use *at the end* of the clause seems to add authority to the view that advance payment is envisaged at the beginning. It appears to be a form of ‘sweeping up’ provision requiring the Tenant to pay costs even if they have already been paid by the Landlord.
77. The second issue was that there was no express provision for a management charge in the Lease. The Tribunal took the view that the Manager is a tribunal appointment and therefore although the Lease does not authorise recovery of the manger’s fee the Order may do so applied [*Maunder Taylor v Joshi* [LRX/107/2005]]. The Tribunal took the view that the cost should be met by the Tenants as the beneficiaries of the service.
78. The Tribunal accepted that there had historically been a differential between the Front and Main Blocks. With regard to the amount of the remuneration the Tribunal considered the annual fee based on a unit charge of £250.00 per unit for the 10 flats in the Main Block and £150.00 for the 4 flats in the Front Block to be high. As stated at the Hearing a sum of £160 to £180 would be considered more in line with this type of property. However, taking into account that the Property has been neglected in terms of management and repair and maintenance, a charge of £200 for the Main Block and £100 for the Front Block was determined to be reasonable. An additional charge of £120.00 per annum was determined to be reasonable for out of pocket expenses. The hourly rate of £40.00 for additional work connected with collection of unpaid service charges and for additional work outside the scope of the Order, such as answering requisitions on the assignment of a lease was determined to be reasonable.
79. The third issue was the range of repairs. The Tribunal was of the opinion that the Manager could only arrange for work to be undertaken that was within the terms of the Lease. Improvements should only be made where these related to a repair. For the avoidance of doubt the Tribunal agreed that Health and Safety and Fire Requirements were included within the work permitted by the Order. It was understood that a Report obtained by the Landlord had recommended/required the securing of the covered drying area and the installation of a door entry system for the front door of the internal common

parts of the Main Block. The Manager should obtain his own Report of a copy of the Landlord's Report prior to taking action.

80. The Tribunal agreed with the Proposed manager's approach of dividing the Property into three sections of:
- the Front Block and its environs (Area A on the plan provided by the Applicants) the maintenance of which only the Tenants of the Front Block contributed,
  - the Common Driveway (Areas B on the plan provided) the maintenance of which all Tenants contributed and
  - the Main Block and its environs (Areas C on the plan provided) the maintenance of which only the Tenants of the Main Block contributed.
81. The Manager set out a draft budget. The initial estimated costs for cleaning the internal and external Common Areas and the gardening appeared reasonable as did the cost of the routine cleaning of these areas and the allowance for accountancy and electricity. The estimated costs for the works relating to the Health and safety and fire requirements may need to be reviewed following the obtaining of a report on the matters and the management fees will also need to be revised following the determination by the Tribunal.
82. The Tribunal appointed James Shoesmith as Manager for four years in accordance with the Order attached hereto.

Judge JR Morris

14<sup>th</sup> April 2014