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

Case Reference : **MAN/00CM/LAM/2015/0009**

Property : **220-221 High Street West,
Sunderland, Tyne & Wear, SR1 1TZ**

Applicants : **Mr J. Pople (Flat 1),
Ms R. Walker (Flat 2)
Mr J. & Mrs T. Hemming (Flat 3)
Messrs I. Makin and B. Stubbs (Flat
4)
Mr J. Nolan (Flat 5)
Mr T Harris (Flat 7)
Mr M. Clarke (Flat 8)
Mr N. & Mrs S. Gibson (Flat 9)**

Representative : **Mr James Sandham of Counsel**

Respondent : **Mr B. Ali**

Representative : **No appearance**

Type of Application : **Appointment of Manager – Section
24 Landlord & Tenant Act 1987**

Tribunal Members : **Judge Lancelot Robson
Mr I. Jefferson TD BA BSc MRICS**

Venue of Hearing : **Sunderland County Court, 44 John
Street, Sunderland SR1 3LA**

Date of Hearing : **18th May 2015**

Date of Decision : **1st July 2015**

DECISION

Decision Summary

- A. Section 24 – application to appoint a manager - granted
- B. Section 20C -application by the Applicant - granted.

Preliminary

1. By an Application dated 10th March 2015 the Applicant seeks a determination under Section 24 of the LANDLORD AND TENANT ACT 1987 (as amended) for the appointment of a manager. An order under Section 20C of the Landlord & Tenant Act 1985 (limiting the landlord's costs of the application) was also made.
2. Directions were given by the Tribunal on 30th March 2015. A hearing date was later set for 18th May 2015. The Respondent was served with a copy of the application, directions and notice of the hearing date, but has taken no part in the application.

Inspection

3. The Tribunal inspected the property at 10.00am on the morning of the hearing in the company of Mr Harris, Mr Pople, Mr Westall, and Mr Sandham, Counsel for the Applicants. The property is located in the main high street shopping area of Sunderland. It has three storeys and attics above, built as commercial premises in 1899. The roof visible from the front at ground level looked in good condition. The upper storeys were converted into flats at some time in the past. The ground floor is occupied by a furniture business, apparently belonging to the Respondent. That area is entirely self-contained. Some flats are also apparently owned by the Respondent. There is a narrow service area to the rear, apparently serving the shop on the ground floor. The flats are served by two staircases accessed from doors on the street at ground level, controlled by an entryphone system. The entryphone system was inoperative on both staircases at the time of our inspection, as was the fire/smoke alarm system. The stairs were carpeted, but old. The carpets on one staircase were dangerously loose at 2nd/3rd floor level. The carpets were old but serviceable, but had not been cleaned or vacuum cleaned for some time, and were dirty. Large accumulations of post littered the floors behind the entrance doors, and there was no sign of any means of securing the post. On the top landings, there were signs of dampness in the walls, apparently due to overflowing valley gutters. The self-opening and closing Velux roof lights at that level had apparently been made inoperative, or not maintained. The TV aerial serving the building was reported to be inoperative. The Tribunal noted that some communal lighting was inoperative at the time of inspection.

Hearing

4. The hearing commenced at 11.35am, after a short delay in case the landlord attended. No one attended on his behalf. Mr Sandham presented the Applicants' written statement of case and the hearing bundle. The Tribunal received the following evidence:

Identity of Applicants

5. The Applicants together own 8 of the 12 flats in the property, and comprise the majority of the leaseholders at the property. The other 4 flats are believed to be owned by the Respondent. The lease of Flat 7 (the Lease) dated 27th April 2007 was used as the specimen lease.

Property to be Managed

6. The proposed Manager wished to manage the building excluding the commercial premises on the ground floor, as the meters, common parts, and fire and smoke alarms for the residential parts were self-contained.

Section 22 Notice

7. The Section 22 Notice was dated 8th December 2014, and gave a deadline for remedying the matters complained of by 25th January 2015. It appeared to comply with the legislation and alleged the following matters :
 - a) breach of a number of specific landlord's repair and management obligations set out in the Lease in clauses 3 and 4, and the Fifth Schedule, by failing to repair and maintain the common entrance hall, the fire alarm systems, and communal lights, failed to keep the carpets in the common parts properly cleaned, and failed to keep the roof in good repair, resulting in severe water penetration into Apartment 7, resulting in the flat being declared unfit for habitation.
 - b) Demand of unreasonable service charges, failure to serve demands compliant with Section 21B of the Landlord and Tenant Act 1985, or with Section 47 of the Landlord and Tenant Act 1987, failure to serve budgets and final accounts, failure to account for service charges, failure to account for Insurance monies received.
 - c) failure to comply the the RICS Service Charge Residential Management Code;
 - d) that other circumstances existed to make it just and convenient for the management order to be made.

Evidence

8. Mr Harris, Mr Pople and Mr Makin submitted witness statements in support of the application. Mr Harris and Mr Pople attended the hearing for examination, as did Mr Westall of Potts Gray, the proposed manager.

9. The Applicants gave evidence that the Respondent had been the owner of the freehold interest since 2006. Between 2006 and 2013 a succession of managing agents (including Potts Gray for a brief period in 2012) had been instructed to manage the property. Management and repairs were poorly done for most of that period. Potts Gray had attempted to manage the property, and Mr Harris considered that they had done it well, but had retired when the Respondent had asked them to act in a way which they believed was unfair to other leaseholders and unprofessional. The leaseholders of Flats 10 and 7 had both obtained favourable decisions from the LVT relating to service charges demanded by the Respondent's agent in 2010 and 2013 respectively.
10. The Respondent had managed the property himself between December 2011 and April 2012, and then again from September 2012 to date. The Respondent used the email address of the furniture business, Bentincks, on the ground floor to communicate with the leaseholders since 2013, from which they assumed that he owned that business also.
11. Mr Harris stated that he was also the leaseholder of another property, at Arndale House, North Shields owned by the Respondent. The Tribunal had appointed Potts Gray as a Section 24 Manager for that property in 2014. He was very satisfied with their management.
12. Mr Makin stated that after a fire at the property had damaged his flat, the Respondent had obtained £35,000 from the insurance company, but insisted on doing the repairs himself. The repairs were very badly done, and an independent estimate of the cost of the work done was about £10,000.
13. Mr Pople gave detailed evidence of a very high turnover of tenants in his flat, and falling rents during the period, which he attributed to the poor standard of services and management.
14. All witnesses stated that the Respondent very rarely communicated or answered correspondence. In their view, he appeared to have no regard for the interests of the leaseholders. Mr Harris referred to an email dated 17th January 2014 from the Respondent (in the bundle) in which the Respondent stated that he was unable to pay Mr Harris sums due under a judgement he had against him, because the other leaseholders had not paid their service charges. Mr Harris considered this very worrying as it indicated that the Respondent intended to use the property service charge account to pay his personal debts.
15. As noted above, the Respondent took no part in the application.

Decision

16. The Tribunal considered the evidence and submissions. It considered that the Respondent had chosen not to take part, and thus had not disputed the Applicant's evidence. It decided that the Respondent had little understanding of his obligations as landlord or as manager. He was in breach of the Lease and the RICS Code. He had made unreasonable service charges. The property was slipping into serious disrepair. The fire alarm, entryphone and communal lighting were all defective, and each constituted a major safety hazard. Almost certainly the property insurance was in jeopardy. It was just and convenient to make an order in the circumstances of this case. Thus it decided that the grounds for appointing a manager under Section 24 were satisfactorily proved.

Manager

17. At the hearing the Tribunal examined Mr Westall, the proposed manager. Mr Westall gave evidence that he was a landlord himself, and had become a property manager because of his dissatisfaction with the performance of managers of flats he owned. Other owners had approached him to manage their properties. The company had been formed in July 2011. It managed 13 buildings containing 49 flats. It was relatively new, but only took on managing properties in the North East of England. It currently managed three blocks in Sunderland. The blocks it managed ranged from 4 – 20 flats. The Company was an affiliate member of ARMA. It had used mostly local contractors to work for it. It provided a 24 emergency service. Its professional indemnity policy was currently being increased to cover £1 million.
18. Asked about managing the property, he stated that he intended to consult leaseholders on a repairs plan. He intended to put in a new communal lighting system, postboxes for residents, and to redecorate. He thought that the dampness was being caused by stagnant water running back into the building, which would be prevented by new gullies. He thought that might cost about £6,000. He believed that it would cost £10 -15,000 to get the building right. He also thought it advisable to put in CCTV, as there had been problems with vandalism in the block. He would consult the leaseholders on the works programme. He considered that he should have the powers of a Manager and Receiver to manage the property satisfactorily. He thought he needed three to five years to bring the property back to a good state. In answer to questions, he explained why his company had ceased to act for the Respondent. Apparently the Respondent had refused to pay service charges on his own properties in the block, and wanted Mr Westall to recover the shortfall from other leaseholders. There had also been a problem about insurance monies. Mr Westall had handled a claim relating to the block, getting estimates and negotiating with the insurer, but the Respondent had insisted that all the money be paid to him for the repairs and doing it himself.
19. On the standard management fees, he stated that his firm would charge £180 per unit per annum. Including VAT, that would work out at £2,160 per year.

20. The Tribunal considered the evidence. Mr Westall was already a Tribunal appointed manager for another block, and Mr Harris was satisfied with his management there. The company was quite new with a modest portfolio, but had a realistic business plan and would not be over-extending itself with this property. Mr Westall also knew the building and its problems. The Tribunal decided to appoint Mr Westall as Receiver and Manager for this property for a period of 5 years on the terms of the draft management agreement attached hereto as Appendix 2.

Costs

21. The Applicants had made a Section 20C application. The Tribunal has a discretionary power to make an order under Section 20C. The Tribunal noted that the Applicants had been completely successful in the application. That of itself was not conclusive, but in the absence of any objection from the Respondent, and the fact that the Respondent had apparently not incurred any costs in connection with this application, the Tribunal would make the order sought. The Tribunal therefore decided all or any of the costs incurred, or to be incurred, by the landlord in connection with this application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

Outstanding Matters

22. The Applicants indicated at the hearing that they were considering a Rule 13 application relating to reimbursement of the Applicants' fees paid to the Tribunal by the Respondent, and also an application for costs incurred by the Applicant due to the Respondent's unreasonable behaviour under Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. The Tribunal has included in Appendix 1 an extract of Rule 13. If such applications were made, the Tribunal considers that it would be difficult to prove unreasonableness falling within the terms of Rule 13(1)(b), but less so relating to Rule 13(2).

23. Any application under Rule 13 must be received by the Tribunal within 14 days of the date of the letter issuing this decision, by means of a written statement of case with full reasons together with copies of all supporting documents and case law. A copy should be sent to the Tribunal and the other party. The other party shall have a further 14 days to send a full written statement of case in Reply with copies of all supporting documents and case law to the opposing party with a copy to the Tribunal. The Tribunal will then determine the application on the papers.

Appendix 1

Landlord & Tenant Act 1987; Section 22

- “(1) Before an application for an order under Section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection 3(3)) be served by the tenant on-
- (i) the landlord and
 - (ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy
- (2) A notice under this section must-
- a) 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 including notices in proceedings, on him in connection with this Part;
 - b) state that the tenant intends to make an application for an order under section 24 to be made by a leasehold valuation tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with;
 - c) 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;
 - d) where those matters are capable of being remedied by any person on whom the notice is served, require him within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and
 - e) contain such information (if any) as the Secretary of State may by regulations prescribe.
- (3) A leasehold valuation tribunal may (whether on the hearing of an application for an order under Section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.
- (4) ...”

Landlord & Tenant Act 1987 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 applies-

- a) such functions in connection with the management of the premises, or
 - b) such functions of a receiver,
- or both, as the tribunal thinks fit.

(2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely-

- a) where the tribunal is satisfied-
 - (i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
 - (ii) ...
 - (iii) that it is just and convenient to make the order in all the circumstances of the case
- ab) where the tribunal is satisfied-
 - (i) that unreasonable service charges have been made, or are proposed to be made...
- ...
 - ac) where the tribunal is satisfied-
 - (i) that any relevant person has failed to comply with any provision of a code of practice approved by the Secretary of State under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case; or
 - b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(3) – (6)...

(7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding-

- (a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or
- (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3)

Tenant Act 1985 Section 20C

“(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal, or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.”

(2).....

(3) The court or tribunal to which application is made may make such order on the application as it considers just and equitable in the circumstances.”

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

Regulations 13(1) - (3)

- 13.-(1) The Tribunal may make an order in respect of costs only-
- (a) under Section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-
 - (i) an agricultural land and drainage case,
 - (ii) a residential property case, or
 - (iii) a leasehold case; or
 - (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

Appendix 2

See copy Management Order attached

FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

Case Number MAN/00CM//LAM2015/0009

Re: 220-221 High Street West, Sunderland, SR1 1TZ

B E T W E E N :

- 1. JONATHAN POPLER (Flat 1)**
- 2. ROSEMARY WALKER (Flat 2)**
- 3. JOHN / TAMSIN HEMMING (Flat 3)**
- 4. IAN / BERNARD STUBBS (Flat 4)**
- 5. JOSEPH NOLAN (Flat 5)**
- 6. TERENCE HARRIS (Flat 7)**
- 7. MARK CLARKE (Flat 8)**
- 8. NEIL / SUSAN GIBSON (Flat 9)**

Applicants

-and-

MR BALAL ALI

Respondent

MANAGEMENT ORDER DATED 1st July 2015

Definitions

In this Order:

- A. "Property" shall mean all those parts of the property known as 220-221 High Street West, Sunderland, SR1 1TZ.
- B. "Managed Property" shall mean the Property (including the common parts serving the residential leaseholders) but excluding (a) the parts occupied as commercial premises and (b) any land or part to which the Respondent has legal title but that is not used in common with or for the benefit of the Lessees.
- C. "Landlord" means Mr Balal Ali or in the event of the vesting of the reversion of the residential or commercial leases of the Property in another or any interest created out of that reversionary interest, the landlord's successor(s) in title;
- D. "Lessee" means a tenant of a dwelling in the Property holding under a long lease as defined by section 59(3) of the Landlord & Tenant Act 1987 and/or any tenant of the commercial premises on the Ground Floor of the Property and "Lease/Leases" is to be construed accordingly; and
- E. "Manager" means Mr Nick Westall of Potts Gray Property Management.

Preamble

UPON the Applicants having applied for the appointment of a manager under Pt.II, Landlord and Tenant Act 1987

AND UPON the First tier Tribunal (Property Chamber) ("the Tribunal") being satisfied that the Applicants are entitled to so apply and that the jurisdiction to appoint a manager is exercisable in the present case

AND UPON the Tribunal being satisfied that the conditions specified in s.24, Landlord and Tenant Act 1987 are met, such that it is just and convenient to appoint a manager

IT IS ORDERED THAT:

1. In accordance with s.24(1) of the Landlord and Tenant Act 1987, Mr Nick Westall of Potts Gray Property Management shall be appointed as the Manager and receiver of the Managed Property pursuant to s.24 of the Landlord and Tenant Act 1987 for a period of five years commencing on the date of this Order, namely 1st July 2015 and is given for the duration of his appointment all such powers and rights as may be necessary and convenient and/or in accordance with the Leases to carry out the management functions of the Landlord (the generality of such powers and rights being without prejudice to what follows herein).
2. The Directions and Schedule of Functions and Services attached to this Order apply and are incorporated into this Order
3. Without prejudice to the generality of paragraph 1 of this Order (above), the Manager shall manage the Managed Property in accordance with:
 - a) The Directions and Schedule of Functions and Services referred to above at paragraph 2 of this Order;
 - b) The respective obligations of the Landlord and the Lessees (both residential and commercial) and/or any under-lessees by which the flats and/or commercial premises at the Property are demised by the Landlord and in particular with regard to repair, decoration, provision of services to and insurance of the Property; and
 - c) The duties of manager set out in the Service Charge Residential Management Code (2nd Edition)) (“The Code”) or such other replacement Code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to s.87 of the Leasehold Reform Housing and Urban Development Act 1993.
4. From the date of this Order, no other party shall be entitled to exercise a management function in respect of the Managed Property where the same is a responsibility of the Manager under this Order.

5. From the date of this Order, the Landlord shall not, whether by itself or any agent, servant or employee, demand any further payments of service charges, administration charges or any other monies from the Lessees (including any commercial leaseholder of the Ground Floor) at the Property. Such functions are transferred to the Manager forthwith.
6. The Landlord and the Lessees and any agents or servants thereof shall give reasonable assistance and cooperation to the Manager in pursuance of his duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of his said duties and powers.
7. An order is made under s.20C of the Landlord and Tenant Act 1987, that the Respondent's costs before the Tribunal shall not be added to the service charges.

(Signed) Tribunal Judge Lancelot Robson

Chairman

1st July 2015

DIRECTIONS

These Directions are incorporated into the Order, dated 1st July 2015

1. The Manager shall, in the performance of his functions under this Order, exercise the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and shall ensure he has appropriate professional indemnity cover in the sum of at least £500,000 providing copies of the current cover note upon request by any Lessee, the Landlord or the Tribunal.

2. That not later than four weeks after the date of this order the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicants and the Landlord shall transfer to the Manager all the accounts, books, records and funds (including without limitation, the service charge reserve fund).
3. The Landlord shall give full details to the Manager of all sums of money it holds in the service charge fund and any reserve fund in relation to the Managed Property, including copies of any relevant bank statements and shall forthwith pay such sums to the Manager. If the Landlord shall thereafter receive such sums due under the Leases it shall forthwith pay such sums to the Manager without deduction or set-off.
4. The Landlord shall permit the Manager, and assist him as he reasonably requires, to serve upon Lessees any Notices under s146 of the Law of Property Act 1925 or exercise any right of forfeiture or re-entry or anything incidental to or in contemplation of the same.
5. The Landlord shall provide copies of all keys (and/or any other means of access) to the Managed Property and/or the electricity, gas, water and any other utility meters located in the Premises.
6. The rights and liabilities of the Landlord arising under any contracts of insurance, and/or any contract for the provision of any services to the Managed Property in place at the date of this order shall upon the date four weeks from the date of this order become rights and liabilities of the Manager and the Manager shall be empowered to manage and/or administer and/or cancel the same at his discretion.
7. That the Landlord shall forthwith put the manager in funds (to the extent not accounted for by the Lessees' contribution towards the service charge as set out in their respective Leases – as for which see below at paragraph 8) for the purpose of carrying out any or all of the functions in accordance with the Schedule of Functions and Services attached and/or the respective obligations of the Landlord by which the flats at the Managed Property are demised by the Landlord and in particular with regard to repair, decoration, provision of services to the Managed Property (including but not limited to cleaning and maintaining the internal and external common parts of the Managed Property) and insurance of the Property.

8. That the Manager shall account forthwith to the landlord for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Landlord's covenants contained in the said leases.
9. That the Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable from the Landlord and as part of the service charges of the Leases of the Managed Property) in accordance with the Schedule of Functions and Services attached.
10. That at the expiry of twelve months from the date of this order, the Manager shall prepare a brief written report for the Tribunal on the progress of the management of the Managed Property up to that date and shall submit the same to the Tribunal by no later than 1st August 2016 (quoting the case reference number and names of the members of the Tribunal making the Management Order).
11. The Manager shall act fairly and impartially in his dealings in respect of the Managed Property.
12. The Manager is directed to register this Order against the Landlord's freehold estate registered under title number TY123111
13. The obligations contained in this Order shall bind any successor in title and the existence and terms of this Order must be disclosed to any person seeking to acquire either a leasehold interest (whether by assignment or fresh grant) or the freehold.
14. The Manager shall be entitled to apply to the Tribunal for further directions in accordance with section 24(4) of the Landlord and Tenant Act 1987, with particular regard (but not limited to) the following:
 - a. any failure by any party to comply with any obligation imposed by this Order (including the Directions and/or Schedule of Functions and Services);
 - b. (if so advised) upon the service of the report in paragraph 6 of these Directions, and/or;
 - c. for directions generally;

d. in the event that there are insufficient sums held by him to discharge his obligations under this Order and/or to pay his remuneration.

SCHEDULE OF FUNCTIONS AND SERVICES

This Schedule is incorporated into the Order dated 1st July 2016.

1. LANDLORD/LESSEE COVENANTS

- 1.1 To observe the Landlord's covenants under the Leases with regard to insurance, repairs, the provision of services, and the giving of consents for alterations to the Property.
- 1.2 To use his best endeavours to enforce the Lessees' covenants under the Leases.

2. SERVICE CHARGE

- 2.1 To prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees as per the percentage share under the terms of their Lease.
- 2.2 To demand and collect rents, service charges, insurance premiums and any other payments from the Lessees in accordance with the Lease, save that the Manager may do so on such date or dates, and by adopting such financial year or accounting period, as the Manager considers appropriate. The Manager may, at his discretion, instruct solicitors and engage other legal services to recover unpaid rents and service charges and any other monies due to the Landlord.
- 2.3 To place, supervise and administer contracts (including but not limited to insurance, utilities and cleaning contracts) and check demands for payment for goods, services and equipment supplied for the benefit of the Managed Property within the service charge budget.

3. ACCOUNTS

- 3.1 So far as practicable for the first financial year, and for each year thereafter, the Manager shall prepare and submit to the Landlord an annual statement of account in accordance with the terms of the Leases detailing all monies received and expended on its behalf. Such accounts to be certified by an external auditor if reasonably required by the Manager.
- 3.2 To produce for inspection within 28 days of any request, receipts or other evidence of expenditure.
- 3.3 All monies collected on the Landlord's behalf will be accounted for in accordance with the Accounts Regulations as issued by the Royal Institution for Chartered Surveyors, subject to the Manager receiving interest on the monies whilst they are in his client account. Any reserve fund monies to be held in a separate client account with interest accruing to the Landlord.
- 3.4 To open and operate client bank accounts in relation to the management of the Managed Property and to invest monies pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to s.42 of the Landlord and Tenant Act 1987. The Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the Leases or to powers given to him by this Order) and all other monies received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund.

4. REPAIRS & MAINTENANCE

- 4.1 To carry out regular inspections (at the Manager's discretion but not less than four per year) without use of equipment, to such of the common parts of the Managed Property as can be inspected safely and without undue difficulty to ascertain for the purpose of day-to-day management only the general condition of those common parts.
- 4.2 To deal with routine repair and maintenance issues and instruct contractors to attend and rectify any problems in accordance with the terms of the Leases. Deal with all building maintenance relating to the services to and structure of the Managed Property.

- 4.3 To appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
- 4.4 To consider works to be carried out to the Managed Property in the interest of good estate management and make appropriate recommendations to the Landlord and the Lessees.
- 4.5 To set up a planned maintenance programme to allow for the periodic cleaning and/or re-decorations of the exterior and interior of the Managed Property and any internal and external common parts.
- 4.6 In addition to undertaking and arranging day-to-day maintenance and repairs, to arrange and supervise major works which are required to be carried out to the Managed Property (such as extensive interior or exterior redecoration or repairs required to be carried out under the terms of the Leases or other major works where it is necessary. To prepare a specification of works, obtain competitive tenders, serve relevant notices on the Lessees and supervise the works in question).

5. HEALTH & SAFETY

- 5.1 To organise an initial health and safety and fire safety check (but not specialist checks and tests) and ensure appropriate risk assessments are in place.

6. INSURANCE

- 6.1 To investigate, arrange and keep in force an insurance policy for the Managed Property, including the commercial parts and other parts of the Property as the Manager considers necessary and appropriate.
- 6.2 To collect and receive any insurance premiums by the Lessees and by any other such person as the Manager considers appropriate
- 6.3 To deal with all insurance claims for the Managed Property as and when they occur and comply with the rules of the Financial Services Authority when carrying out any regulated insurance activities.

7. GENERALLY

- 7.1 To delegate functions as he thinks fit to other employees of Potts Gray Property Management and/or to appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions.
- 7.2 To commence proceedings or such other enforcement action as is necessary to recover sums due from the landlord pursuant to paragraphs 7 and 8 of the Directions attached hereinabove.
- 7.3 To rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the Landlord or any Lessee owing sums of money under his Lease.

8. FEES

- 8.1 Fees for the above mentioned management services are a basic fee of £2,160 per annum for the Managed Property Inclusive of any VAT. Those services to include the services set out in paragraph 2.4 of The Code.
- 8.2 Major works carried out to the Managed Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees informing them of the works and supervising the works) will be subject to a maximum charge of 10% of the cost (subject to a minimum fee of £250.00): this in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.
- 8.3 If required to act in the capacity of Company Secretary an additional fee of £250 per annum will be charged.
- 8.4 The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described at 8.1 above, are to be charged for on a fee basis to be agreed.

9. COMPLAINTS PROCEDURE

- 9.1 The manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors. Details of the procedure are available from the Institution on request.

10. PROVISIO

- 10.1 In the event of any ambiguity or contradiction in the powers rights obligations or duties of the Manager, the provisions of the Leases, statute and guidance from any regulatory bodies shall prevail.