11898

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	**CHI/OOML/LIS/2015/0054** **CHI/OOML/LAM/2015/0008** **CHI/OOML/LIS/2015/0079** **CHI/OOML/LAC/2015/0012**
Property	**20 Brunswick Terrace, Hove, East Sussex BN3 1HJ**
Applicants	**Pamela Hoad & Jason Loadsman**
Applicants' Representative	**Mr T Chevasse**
Respondent	**Twenty Brunswick Terrace (Hove) Limited**
Respondent's Representative	**Mr G Martin**
Type of Applications	**Liability to pay services charges: Sections 19, 27A of the Landlord & Tenant Act 1985 (the 1985 Act) and Appointment of a Manager: Sections 22,24 Landlord & Tenant Act 1987 (the 1987 Act)**
Tribunal Members	**Judge RTA Wilson (Chairman)** **Andrew Mackay FRICS (Surveyor Member)** **Peter Gammon MBE (Lay person)**
Date and Venue of Hearing	**19 & 20 May 2016** **Tribunal Offices Chichester**
Date of Decision	**14 June 2016**

DECISION

The Applications

1. The applications required the tribunal to make a determination of the Applicants' liability to pay service charges for 2012, 2013, 2014 and 2015, a determination as to the payability of administration charges of £250 levied against Mr Loadsman in 2013, 2014 & 2015 and a determination of an application to appoint Mr G Pickard as the tribunal appointed manager of the Property.

2. The tribunal also had before it an application under S.20C of the 1985 Act that the Respondent's costs incurred in these proceedings should not be recoverable as service charges.

Summary of Decision.

3. The contested service charges are determined to be the amounts set out at Paragraphs 31, 34-37, 40-41, 44, 49-50, 52 & 54.

4. The administration charges of £750 levied against Mr Loadsman are not payable.

5. Mr G Pickard is appointed as manager of the Property for a period of three years from the date of this decision in accordance with the management order set out in the schedule to this decision.

6. An order is made under S.20C of the 1985 Act.

Background & Preliminary matters.

7. Initially the Applicants made two principal applications, one for the appointment of a manager under S.24 of the Landlord and Tenant Act 1987 and the other for a determination as to the payability and reasonableness of service charges under S.27 of the Landlord and Tenant Act 1985. Both these applications contained a subsidiary application under S.20 of the 1985 Act seeking an order that the costs of the proceedings should not be added to the service charge account.

8. By the time of the hearing the Applicants had made a further service charge application and also an application under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as to whether administration charges of £250 levied against Mr. Loadsman for 2013, 2014 and 2015 are payable.

9. The tribunal made directions providing for all of the applications to be consolidated and heard together.

10. A hearing of the applications took place on 19 & 20 May 2016. Mr T Chevasse represented the Applicants and Mr G Martin a director and shareholder of the Respondent company represented the Respondent.

11. At a case management hearing held on the 2 November 2015 the issues for determination were explored and agreed with the parties. These issues were subsequently expanded following the issue of a further service charge application and also by the issue of the administration charge application. Accordingly by the time of the hearing the service charge issues for determination were limited to the following matters:

Service charge year 2009/2010

(a) Basement works
(b) Corporate filing fee £131
(c) Directors Insurance premium £316

Service charge year 2010/2011

(a) Insurance premium excess

Service charge year 2012/2103

(a) Basement works
(b) Secretarial Fee £240
(c) Legal fees for eviction £1,662

Service charge year 2013/2014

(a) Bike sign costs £630
(b) Legal fees for eviction

Service charge year 2014/2015

(a) Basement works £259.20
(b) Legal fees re eviction £1000
(c) Corporate legal fees £902
(d) Company secretary fee £150

Written Evidence

12. The Applicants' representative had prepared a hearing bundle extending to possibly over 1500 pages which failed to accord with the tribunal directions that one bundle be agreed which should consist of a file with index and page numbers. The hearing bundle consisted of three large files each with independent numbering and containing copy documents the pages of which did not follow in sequence. The files contained a large amount of material which had no discernable relevance to the applications in hand. For example one tab contained documents described as "having no discernable relevance."

13. At the commencement of the hearing the tribunal judge directed that it was not proportionate or reasonable for the tribunal to be expected to consider each page of evidence and establish its relevance. A direction was therefore issued that the parties must bring to the attention of the tribunal at the hearing any written material relevant to their case and to explain its relevance. At the hearing all parties including the Applicants' representative had the greatest of difficulty in locating documentation, and the tribunal estimates that the parties subsequently referred to less than 1% of the documents in the bundle.

The Inspection

14. The tribunal inspected the Property immediately prior to the first day of the hearing in the company of Mr. G Martin. The inspection was limited to a view of the exterior of the Property from ground level, the common parts and the interiors of the basement flats, A and B.

15. The Property forms part of a continuous terrace of listed buildings dating from the Regency period incorporating a number of high architectural features, occupying a corner position at the junction of Brunswick Terrace and Brunswick Square, Hove, East Sussex immediately looking out across public lawns towards the English Channel and the Brunswick Square gardens.

16. The Property is arranged on basement, ground and four upper floors. There are five flats on the ground to fourth floors approached from an entrance in Brunswick Square and three flats in the basement with their own separate access.

17. The public ways were found to be in fair decorative repair and condition. The outside of the building had recently been redecorated. The interior of flats A and B were found to be in poor condition, and in need of comprehensive repair and modernisation. In flat B there was a strong and pungent smell of effluent, which without further investigation appeared to be coming from the drainage system and manhole located in the light well approached off flat B.

The Lease

18. The tribunal was provided with copies of the leases for flats A & C. The lease for flat A is for a term of 999 years from the 25th March 2007 at a pepper corn rent.

19. So far as material to the issues in this case the relevant provisions in the lease may be summarised as follows:

    (a) On the 25th March and 29th September in each year the tenants are to pay an advance maintenance contribution on account of the tenants share of the annual cost to be incurred by the landlord in complying with its

maintenance insurance and other obligations as set out in clauses 5 and 8 of the lease. The landlord can vary the amount of advance maintenance charge

to reflect the estimated annual expenses of carrying out its duties under the lease.

(b) The landlord is obliged to produce annual accounts showing expenditure in each year on maintenance.

(c) The tenant's liability to pay any balancing charge is triggered by the service by the landlord of annual accounts showing expenditure incurred by the landlord in the previous year, credit being given to the tenant for payments already made on account.

(d) The lease contains a provision for the landlord to accumulate reserve funds in its discretion to cover future items of major expenditure.

(e) In general terms the lease provides for the landlord to be responsible for the upkeep of the structure and the common parts with the tenants being responsible for the upkeep of their flats. There are also clauses providing for the service charge to cover areas demised to a tenant but with reserved rights of access to others.

The Relevant Law

20. The tribunal has power under S.27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when a service charge is payable. However, no application can be made in respect of a matter which has been admitted or agreed by a tenant.

21. By S.19 of the Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

22. Under S.20C of the Act a tenant may apply for an order that all or any of the costs incurred in connection with the proceedings before a Leasehold Valuation Tribunal 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.

23. The provisions of Section 158 and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 give the tribunal jurisdiction to determine whether an administration charge is payable, and if it is, as to the person by whom it is payable, the person to whom it is payable, the amount which is payable, and a date by which it is payable.

24. Under S.24 of the Landlord and Tenant Act 1987 the tribunal may, on an application for an order under that section, appoint a manager to carry out in relation to the relevant premises, (a) such functions in connection with the

management of the premises, or both as the tribunal thinks fit.

(b) such functions of a receiver, or

25. In summary by Section 24(2) of the 1987 Act the tribunal may only make an order in one or more of the following circumstances:

(a) Where it is satisfied that the landlord is in breach of any obligations owed by him to the tenant under his/her tenancy and relating to the management of the premises in question or any part of them and that it is just and convenient to make the order in all the circumstances of the case.

(b) Where it is satisfied that unreasonable service charges have been made, or are proposed or likely to be made, and that it is just and convenient to make the order in all the circumstances of the case.

(c) Where it is satisfied that the landlord has failed to comply with any relevant provision of a code of practice approved by the Secretary of State pursuant to Section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and that it is just and convenient to make the order in all the circumstances of the case.

(d) Where it is satisfied that other circumstances exist which make it just and convenient for the order to be made.

Administration Charges

26. Mr Chevasse's submissions were that the original lease did not contain a provision allowing an administration charge to be levied. In 2012 the Respondent had sought to introduce a new regulation allowing administration charges to be levied for sub-letting. It was his clients' case that an administration charge could not be unilaterally imposed in this way and he invited the tribunal to find that the imposed sub-letting administration charges totalling £750 were not payable.

27. Mr Martin told the tribunal that the sub-letting administration charges of £250 per annum were always supposed to be flexible and the Respondent was prepared to consider alternatives. In the absence of agreement the Respondent admitted that the levied charges of £750 could not be sustained.

28. The Applicants' contended that it was not for them to put forward any alternatives as suggested by Mr Martin. In these circumstances the Respondent withdrew its challenge to the administration application. The tribunal is persuaded by the Applicants' submissions that the attempts by the Respondent, to unilaterally impose a new regulation introducing an administration charge for sub-letting, were not lawful and of no effect. In the judgment of the tribunal the imposition of a new financial liability cannot be achieved by way of a unilaterally imposed regulation but must be achieved by varying the lease by way of a formal deed of variation signed by the landlord and tenant. As no such document was brought to the attention of the tribunal, it determines that the administration charges of £750 are not payable and if any such monies have been paid they should be returned to Mr Loadsman.

Service Charge year 2009/2010

Basement costs £188

29. Mr Chevasse commenced by telling the tribunal that he had been surprised by the amount of work carried out to the basement and charged to the service charge account spanning a number of years. He was surprised because it was his view that there were no common parts in the basement area of the Property. When his clients had received copies of the invoices they had looked at the description of works and withdrew their challenge to any works which could be described as structural. This left only the painting of part of the basement at a cost of £188.

30. Mr Martin responded by telling the tribunal that the painting work had related to the common entrance way at basement level which formed the entrance to flats A, B, and C. Whilst he admitted that the area in question formed part of flat C, it was his contention that there were access easements reserved over it in favour of the other lessees for servicing communal utilities. Because of these access easements the Respondent had been right to charge the painting costs of this area as a service charge item and the costs of £188 were reasonably incurred.

31. On this issue the tribunal finds in favour of the Respondent. Clause 8 (a) (ii) of the lease consists of a covenant by the landlord *to use its best endeavours to keep all structures drains wires pipes cables and other things which form part of the block in good and substantial repair.* Clause 6 (d) (i) (c) contains a covenant by the landlord *to remedy all defects in and keep in good and substantial repair and condition the passages staircases landings entrances and all other parts of the block enjoyed or used by the lessees in common with the other lessees or occupiers of the flats in the block.* The third schedule to the lease of flat C grants rights over part of the flat in favour of the owners and lessees of other flats. This is necessary as the basement area includes a manhole to access the drains. In the judgment of the tribunal the combination of these provisions means that the cost of maintenance of areas containing common services is capable of forming part of the service charge, even if those areas are comprised within a flat. In this case the tribunal considers that the painting of this area can properly be described as a maintenance obligation and therefore the painting costs are payable. The Applicants adduced no evidence to suggest that the costs were unreasonable and accordingly the tribunal determines that the charge of £188 is payable and reasonable in amount.

Corporate Filing fee

32. The Applicants' submissions can be simply put. They contended that there were no provisions in the lease to enable the Respondent to collect corporate filing fees as service charge. They contended that these charges had to be collected by the Respondent via its Articles of Association.

33. In reply, Mr Martin contended that for many years it had been agreed by all the lessees unanimously that the corporate fees should be recovered as service charge.

He maintained that there had been any number of shareholders and directors resolutions which supported this view. It was unreasonable for the Applicants to

go back on what they had agreed to and that the corporate filing fee was therefore payable and reasonably incurred as a service charge item. In the alternative, Mr Martin argued that clause 8 (a) (xi) of the lease enabled filing fees of the company to be collected as service charge.

34. The tribunal has no hesitation in finding that the corporate filing fee is not recoverable as a service charge item. Insufficient evidence was adduced to support the existence of a contract between all lessees that the companies administrative expenses could be collected as a service charge item.

35. Even if a contract had existed, it would not in the judgment of the tribunal be adequate to allow these fees to be charged to the service charge account. The starting point must be the lease and the tribunal would expect a clause in unequivocal and express terms allowing administrative expenses of the company to form part of the service charge. The tribunal carefully considered clause 8 (a)(xi) of the lease which reads *without prejudice to the foregoing to do or cause to be done all such works installations and matters and things as in the absolute discretion of the lessor may be considered necessary or advisable for the proper maintenance safety amenity and administration of the block.* It is the tribunal's judgement that whilst this clause may cover administration costs of the block it does not extend to the administration costs of the company. For these reasons the tribunal finds that the corporate filing fee of £131 is not payable as a service charge item.

Directors' insurance premium

36. For the same reasons the tribunal determines that the directors' insurance premium of £316 is not recoverable as service charge.

Service charge year 2010/2011

37. The only challenged item in this year was the insurance premium excess. Originally the challenged amount had been just under £1,400 but by the time of the hearing the disputed amount had reduced to a little over £380. Mr Chevasse told the tribunal that it had proved impossible to get to the bottom of the issue and in view of these difficulties the Applicants withdrew their challenge and admitted that the insurance premium was payable as a service charge item and was reasonable in amount. The tribunal was therefore not called upon to make a determination.

Service charge year 2012/2013

Basement works

38. Mr Chevasse told the tribunal that the current amount under challenge for this year was £756. However he had difficulty in breaking down this figure or pointing to the relevant invoices in the hearing bundle, which were challenged. As far as could be ascertained the challenged invoices constituted £72 relating to the replacement of a communal lock, £336 for work carried out to the internal light well area forming part of flat B, £96 to replace hinges in the dustbin store, £84 for lighting repairs in the basement area, and £114 incurred for a survey to flat C in the basement where the lessee had reported damp issues. Finally there was a cleaning charge of £54.

39. Mr Chevasse contended that as only Mr Martin, the leaseholder of all three flats in the basement, benefited from these works he alone should be responsible for the cost. Mr Martin contended that all of these charges related to either common parts or were services provided where the Respondent had a liability to maintain and as such were payable as service charge.

40. On the evidence brought to the attention of the tribunal it has concluded that all of these items can properly be attributed to the service charge account having regard to the clauses referred to in paragraph 31. As no evidence was adduced challenging the costs of these items the tribunal finds them all to be payable and reasonable as service charges.

Secretarial Fee

41. The tribunal determines that the secretarial fee of £240 is not chargeable as service charge for the reasons set out in paragraphs 34 and 35 above.

Legal Fees

42. Mr Chevasse's submissions in relation to the legal fees incurred in the attempted eviction of the tenant in flat C can also be simply put. He claimed that there was no provision in the leases for these costs to be recoverable as service charge. He submitted that the litigation could only benefit Mr Martin who owned the flat in question. There was no discernible benefit flowing to any other lessee. He rejected any arguments that might be made by the Respondent that agreement had been forthcoming from the lessees in their capacity as shareholders that legal costs should be incurred by the company and recovered as service charge. He did not accept the validity of any shareholders meetings which might have taken place and in which approval may have been sought for the Respondent to fund Mr Martin's litigation.

43. Mr Martin claimed that there was a long history in the lessees paying for legal advice obtained by the company in seeking to evict the tenant. He claimed that the company had agreed that the proceedings should be taken in his name alone but that the costs should be recoverable as service charge. In the alternative he claimed that clauses 8 (a)(v) and (xi) of the lease were wide enough to encompass the fees and as there had been no challenge to the reasonableness of the fees they should be upheld as service charge. He reiterated that there had been unanimous approval of the shareholders to take eviction proceedings at the company's expense, which should in due course be recovered through the service charge and

he contended that it was not reasonable for the Applicants to go back on what they had agreed.

44. The tribunal has no hesitation in determining that no part of the legal fees incurred or to be incurred in attempting to evict the tenant in flat C are or will be recoverable as service charge either in this year or any other. The tribunal is not persuaded that any tangible benefit will flow to any other lessee other than Mr Martin. As described to the tribunal, the litigation is Mr Martin's and Mr Martin's alone and it is he who must be responsible for the cost.

45. In arriving at this decision the tribunal has carefully considered clauses 8 (a) (v) and (xi) and finds that neither of these clauses is worded wide enough to allow personal litigation of a lessee being recoverable as service charge.

46. It is not within the tribunal's jurisdiction to determine the existence or otherwise of a shareholder's agreement to fund the litigation. Therefore, the Respondent's argument that there has been a long history behind the Respondent funding the eviction proceedings with the shareholders consent cannot be used to justify the charges being imposed as service charge. The fact that the company may in the past have funded this litigation and been successful in recovering the cost through the service charge does not make the charges recoverable as service charge in the event of them being challenged before this tribunal.

Service charge year 2013/2014

Bike signs

47. Mr Chevasse's submissions on this issue related solely to quantum. Whilst he accepted that the costs of signs were recoverable as service charge it was his clients contention that £630 for six signs was exorbitant. His clients had received a verbal quote of approximately half the cost and on this basis they contended for a figure of not more than £315.

48. Mr Martin told the tribunal that before obtaining the signs he had asked the managing agents to obtain quotations. They sent the company a written estimate to support the figure of £630 and he had telephoned the managing agents who had advised him that this was the best quotation on offer. In these circumstances he had accepted the quotation and instructed the signs to be affixed to the railings of the Property.

49. On this issue, although the cost does seem high, the tribunal finds in favour of the Respondent and upholds the charge of £630. It does so because the figure was supported by a written estimate and bearing in mind the advice received from the managing agents it is difficult to know what else the company could have done.

Legal fees

50. Legal fees charged in this year are not recoverable for the reasons stated above.

Service Charge year 2014/2015

Basement charges

51. In this year the challenged invoices totalled £259.20. As the legal submissions by both parties were the same as advanced in previous years there is no need for them to be repeated.

52. Doing the best that it can with the evidence presented to it at the hearing, the tribunal upholds all of the challenged invoices for the reasons set out in paragraph 31 above, save for the following:

53. There is an invoice in the hearing bundle for £48 at page 144, which relates to the removal of urine stained bedding and another invoice also for £48 at page 145 for the removal of rubbish. The tribunal allows as service charge only the invoice at 145 as the Applicants unchallenged evidence was that the invoice at page 144 had been incurred as a result of Mr Martin's tenant.

Legal and corporate fees

54. Legal, corporate fees and company secretarial fees are not recoverable as service charge for the reasons stated above.

Appointment of manager application

55. The Applicants' case was not easy to ascertain or follow. Mr Chevasse admitted that he had no experience in these sorts of applications and asked that any technical errors be overcome in the interests of justice. The tribunal found the Applicants' legal submissions and supporting documents were in no coherent order in the hearing bundle. The application involved a significant amount of repetition. The hearing bundle appeared to contain a significant amount of material which had no discernable relevance and at times the pleadings bore little correlation to the grounds for appointment of manager as set out in the Applicants' section 22 notice.

56. As far as can be ascertained, the primary grounds for seeking an appointment of a tribunal appointed manager were twofold. Firstly, because of the imposition of unreasonable service charges in the form of the corporate administrative costs of the company and the legal fees for the attempted eviction of Mr Martin's tenant. It was alleged that the corporate costs exceeded £3,000 in the last three years and the eviction costs had exceeded £4,000 with a further £5,000 to be demanded shortly.

57. Secondly the Applicants alleged that the corporate governance of the Respondent had broken down in that Mr Martin was using his position as chairman and

holder of proxy votes from other lessees to cause the Respondent to levy service charges to fund his own personal litigation against a sitting tenant.

58. The Applicants further alleged that the Respondent was in breach of its covenant to give quiet enjoyment and that there had been breaches of the RICS code of practice although neither of these two grounds were developed at the hearing.

59. The Respondent's opposition to the application was equally difficult to ascertain in that it had failed to comply with the tribunal's directions, which provided for a clear statement of opposition to be served on the Applicants together with supporting documentation and witness statements. Mr Martin had difficulty in taking the tribunal to where this statement was in the hearing bundle. The Respondent appeared to rely on a letter dated the 27 October 2015 written by Mr Martin which had been sent to the Applicants' representative, the company secretary, the managing agents, the proposed managing agent and all leaseholders.

60. This letter runs to over 16 pages and much of the content is historic and has no relevance to the application to appoint a manager. At the hearing the tribunal explored with Mr Martin the content of this letter and what steps had been taken by the Company following receipt of the preliminary notice.

61. It emerged that Mr Martin had not convened a directors meeting on receipt of the preliminary notice but had taken it upon himself as chairman to reply. He could provide no explanation to the tribunal as to why such directors meeting had not been convened and it appeared that he considered that his role as chairman enabled him to represent the company without the need to obtain board approval or consult any other party.

62. As far as can be ascertained the Respondent's case as articulated by Mr Martin was that the preliminary notice was defective as it was neither signed nor dated. In the alternative Mr Martin contended that it had been agreed by all lessees that the corporate and legal fees be recovered as service charge. Because of this agreement the Respondent did not accept that there had been any attempt to levy unreasonable service charges. Mr Martin also contended that it would be unreasonable for the lessees to go back on an arrangement that they had agreed to. In effect they were now bound by this agreement.

63. Mr Martin also rejected the suggestion that there had been any break down in the governance of the Respondent. He was adamant that the company was being run properly for the benefit of all lessees and that there was no valid reason for a manager to be appointed. The existing management structure worked well and no grounds had been established for it to be changed. Mr Martin contended that the existing management of the Property was also satisfactory and acceptable and any attempt to change it would be unjustified, unwarranted and based solely on a personal vendetta against him.

Discussion

64. The tribunal first reminded itself of the legal requirements to be satisfied before a management order can be made. Whilst the relevant law is cited at paragraphs 24 to 26 above, in brief a valid preliminary notice must be served on the freeholder, which must comply with the provisions of S.22 of the 1987 Act. Thereafter an application can be made to the tribunal but an appointment can only be made if the grounds as set out in S.24 of the 1987 Act are made out.

65. It is common ground that the Applicants did serve what purported to be a preliminary notice although the Respondent challenged the validity of this notice. Mr Martin contended that as the notice was neither dated nor signed then it should be rejected and in the absence of a valid preliminary notice the application must fail.

66. The tribunal rejects this argument for the following reasons: the required content of the preliminary notice is set out in S.22.2 of the 1987 Act. There are five specific requirements detailed at S.22.2 a-e. The tribunal reviewed the notice against the statutory requirements and came to the conclusion that all of the required content is included. Although Mr Chevasse admitted that the notice was not dated or signed there is no statutory requirement for the notice to be dated or signed. Mr Martin acknowledged that the notice was received by the Company on or about 21st July 2015 and was circulated to all relevant parties. It is therefore evident that the service of the notice was effected.

67. S.24 of the 1987 Act provides that the tribunal may only make a management order if it determines amongst other things that unreasonable service charges or administration charges have been made or are proposed and that it is just and convenient to make a management order. The tribunal is satisfied that this ground has been made out. It has had no hesitation in finding that the sub-letting administration charges are unreasonable as are Mr Martin's legal fees as a service charge. It is clear to the tribunal that if a management order is not imposed then whilst Mr Martin is able to control the Respondent these charges will continue.

68. At the heart of the problem lies the governance of the Respondent company bearing in mind that the Applicants have no confidence in Mr Martin as a chairman of the company. The evidence shows that for some years past Mr Martin has been in substantial control of the company by virtue of the fact that he owns three shares in the company and has the confidence of two other shareholders. If this state of affairs continues then Mr Martin's control over the company will continue. Mr Martin gave no assurances to the tribunal that he would use his votes to cause the company to cease from charging his legal expenses as a service charge item and no assurance that the company would cease to treat its administration costs as service charge.

69. The hearing bundle contains any number of pages of documentation, which show that there has been a complete breakdown in confidence between the Respondent on the one hand and the Applicants on the other. This breakdown in confidence is not surprising bearing in mind the tribunal's findings in the service charge application. More than anything it is this breakdown in confidence, which is causing the Property to be poorly managed and constitutes a ground for the appointment of a manager, see S24.2 (b) of the 1987 Act.

70. The effect of making a management order will be to take the management of the Property out of the hands of the company into the hands of an experienced managing agent who will be answerable not to the board of the Respondent but to the tribunal if there are any difficulties. The proposed manager, Mr Pickard attended the hearing and gave evidence to the tribunal.

71. Mr Pickard told the tribunal that his firm had previously managed the Property and he was familiar with it. Mr Pickard was able to demonstrate to the tribunal his expertise as a tribunal appointed manager. He confirmed that he already held three manager appointments and that his current portfolio exceeded 100 buildings. He had in place the appropriate property insurance and could call upon the support of his firm Jackson's for full management support. He confirmed that he was familiar with the RICS code for managing residential property and that he would comply with it. He confirmed that he would set up separate bank accounts for the Property and that he maintained a client trust account and that interest earned on service charge would be credited to the individual accounts.

72. Mr Pickard had been present at the hearing and therefore witnessed for himself the clear tension between the parties. Mr Pickard confirmed that he was prepared to take on the appointment and that if any difficulties arose then he would apply to the tribunal for directions. The tribunal was not persuaded by Mr Martin's attempts to establish that previous correspondence between Mr Pickard and the Applicants gave rise to a conflict of interest.

73. For the reasons stated above the tribunal determines that it is satisfied that circumstances exist which makes it just and convenient for Mr Pickard to be appointed as manager of the Property for a period of three years from the date of these reasons and in accordance with the order set out in the schedule hereto.

74. The core terms of appointment are that he shall be entitled to charge a basic management fee of £2,000 plus VAT per year. For major works which involve specifications, schedules of works and contract administration the charges shall be 10% of the cost for works. Charges for non-recurring works outside of usual management terms shall be £95 per hour plus VAT for a principal, £75 per hour plus VAT for an associate/manager and £60 plus VAT for an assistant.

Section 20 C costs Application

75. In deciding whether to make an order under S.20C of the Act a tribunal must consider what is just and equitable in the circumstances. The circumstances include the conduct of the parties and the outcome of the proceedings.

76. Bearing in mind that the Respondent freeholder is jointly owned by the lessees it is not clear what the bringing of these proceedings has achieved. It has all the hallmarks of "robbing Peter to pay Paul".

77. Whilst the tribunal has determined that the corporate administration costs cannot be recovered as service charge, funding for these essential items must be agreed otherwise there is a danger that the Respondent will descend into liquidation, which will materially affect the value of every flat in the building. The tribunal heard evidence that the ground rents previously payable to the company are no longer payable and therefore it appears that the company has no revenue stream

to enable it to fund its administration and other expenses. This is an issue that must be resolved.

78. That said, both Mr. Chevasse and Mr. Martin confirmed that they had provided their services without charge. In particular Mr Martin confirmed that it was not the Respondent's intention to levy a service charge for costs incurred in defending the proceedings in the tribunal. He confirmed that the Respondent had no objection and indeed consented to an order being made under S.20C of the 1985 Act. The tribunal was satisfied that the parties understood this meant that the Respondent would have to fund any costs incurred by means of a shareholder's call if necessary.

79. The tribunal therefore orders that to such extent as they may otherwise be recoverable, the Respondent's costs, if any, in connection with these 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 Applicants.

Schedule

ORDER UNDER SECTION 24 OF THE LANDLORD AND TENANT ACT 1987

REF: CHI/00ML/LAM/2015/0008

SECTION 24 LANDLORD and TENANT ACT 1987

20 Brunswick Terrace Hove East Sussex BN3 1HJ

Applicants P Hoad & J Loadsman

Respondent 20 Brunswick Terrace (Hove) Limited

1. In accordance with section 24(1)(a) Landlord and Tenant Act 1987 Mr Gary Pickard of Jacksons ('the Manager') is appointed as manager of the property at 20 Brunswick Terrace Hove East Sussex BN3 1HJ ('the Property').

2. The order shall continue for a period of three years from 14 June 2016.

3. The Manager shall manage the Property in accordance with:

   (a) The directions and schedule of functions and services attached to this order.

   (b) The respective obligations of the landlord and the leases by which the flats at the Property are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property.

(c) The duties of a manager set out in the Service Charge Residential Management Code ('the Code") or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property or the Respondent.

2. That no 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 Respondent shall transfer to the Manager all the accounts, books, records and funds (including without limitation, service charge reserve fund).

3. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon the date hereof become rights and liabilities of the Manager.

4. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the terms described in the decision and this order.

5. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

i. Maintain appropriate building insurance for the Property and ensure that the Manager's interest is noted on the insurance policy.

Service charge

i. Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.

ii. Set demand and collect service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees. Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.

iii. Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

i. Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor if required by the Manager.

ii. Maintain efficient records and books of account which are open for inspection. Produce for inspection, receipts or other evidence of expenditure.

iii. To maintain on trust an interest bearing account/s at such bank or building society as the manager shall from time to time decide into which ground rent if any, service charge contributions and all other monies arising under the leases shall be paid.

iv. All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

i. Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.

ii. The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondent and the lessees.

iii. The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.

Fees

i. Fees for the above mentioned management services will be a basic fee of £2000 per annum. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.

ii. Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a charge of 10% of the cost. This in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.

iii. An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee.

iv. VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.

v. The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for a time basis.

Complaints procedure

The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend the time limit, or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.