10220

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AP/LAM/2014/0010**
Property	:	**188 Albert Road** **London N22 7AH**
Applicant	:	**Murray Graham**
Respondent	:	**188 Albert Road RTM Co Ltd**
Representative	:	**Prickett & Ellis Property Management**
Proposed Manager	:	**James McCaghy, Residential Management Group**
Type of Application	:	**Appointment of manager**
Tribunal Members	:	**NK Nicol** **Mr A Lewicki BSc MRICS MBEng** **Mr C Piarroux**
Date and venue of Hearing	:	**4th July 2014** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**22nd July 2014**

DECISION

Decision of the Tribunal

(1) The Tribunal is satisfied that it is just and equitable to appoint Mr James McCaghy of the Residential Management Group as manager of the subject property for a period of three years.

(2) The order made by the Tribunal is set out in Appendix 2 to this decision.

The application

1. The Applicant is the freeholder, jointly with Dr A Sinclair, of the subject property, a development of 6 flats with garages and a garden, and a leaseholder of one of the flats. He seeks an order appointing Mr James McCaghy of the Residential Management Group to manage the property in place of the current agents, Prickett & Ellis, under Part II of the Landlord and Tenant Act 1987 (the relevant legislation is set out in Appendix 1 to this decision).

2. The Respondent is a right to manage company formed by the other lessees to take over management of the property in 2009, for which they appointed Prickett & Ellis. The Applicant and Dr Sinclair did not oppose the exercise of the right to manage and became members of the Respondent company until they resigned on 1st May 2014.

3. The Tribunal heard the application on 4th July 2014. The hearing was attended by the Applicant, supported by Dr Sinclair, and, for the Respondent, Mr A Boyd, the property manager, Ms C Fox, managing director of Prickett & Ellis, and Mrs Y Packer, the lessee of a Flat 1 and a member of the Respondent company.

4. The hearing finished at 5pm so the Tribunal arranged to inspect the property on 10th July 2014. The inspection was attended by the Applicant, Dr Sinclair and Mr Boyd.

5. The Applicant set out a long list of alleged failings on the part of Prickett & Ellis but it would unnecessarily lengthen this decision to address each allegation in full. The following matters address those issues which explain how the Tribunal reached its decision.

Main complaints

6. Under section 24 of the Landlord and Tenant Act 1987 the Tribunal has the power to order the appointment of a manager if the existing manager is in default of their obligations and it is just and equitable so to order. The Applicant alleges that Prickett & Ellis were in breach of a number of obligations.

7. A management order is not the only remedy for a lessee who is dissatisfied with the management of their property. The lessees other than the Applicant had been dissatisfied with the management provided by the appointees of the Applicant and Dr Sinclair prior to 2009. As well as exercising their right to manage already referred to above, they challenged various service charges by application to the Tribunal (case ref: LON/00AP/LSC/2009/0360). The Tribunal decided on 14th January 2010 against the lessees, finding that all the charges which had been challenged were reasonable other than the fees of the

then managing agents, the Residential Management Group ("RMG"), which were reduced by 30% to take account of their poor communication with the lessees. For the same reason, the Tribunal also made an order under section 20C of the Landlord and Tenant Act 1985 precluding the Applicant and Dr Sinclair from recovering their costs of the proceedings through the service charge. The Tribunal's decision will be referred to further below.

8. It should be noted that the Respondent's submissions included assertions that many of the Applicant's points had been dismissed in a previous Tribunal decision dated 4th September 2013 (LON/00AP/LAM/2013/0019). In fact, that was a short decision determining that the Applicant had not demonstrated that the statutory test had been passed for dispensing with the requirement to serve a notice under section 22 of the Landlord and Tenant Act 1987 prior to applying for a management order. It did not address any of the substantive points and can't provide a defence to any of the Applicant's complaints.

Asbestos removal

9. The first issue raised by the Applicant concerned the removal of asbestos. Prickett & Ellis commissioned an inspection for asbestos in the communal areas of the property. The survey report of 15th March 2012 identified some asbestos and lessees were informed that upcoming works would include asbestos removal. The Applicant understood this to include asbestos panels above the doors of and just inside storage cupboards located to the rear of the property. In the event, the panels above the doors were not removed but enclosed while the Tribunal were able to see asbestos still in place inside one of the cupboards.

10. On seeing this complaint in the application, Prickett & Ellis commissioned another inspection by the same experts who had produced the previous report. Their subsequent report found no asbestos but contained the express caveat that they had only inspected two areas where they had previously found asbestos. Those areas did not include the storage cupboards.

11. At the hearing, Mr Boyd and Ms Fox speculated that the experts had not inspected the storage cupboards because they were either inaccessible or not regarded as communal areas. However, in their written response to the application, the Respondent had asserted that there was no asbestos in the building. A brief inspection of one cupboard shows this not to be true.

12. It is an essential part of good management that the manager is clear what is going on and what is intended. The Applicant set out his allegation in relation to the storage cupboards clearly. In response, Prickett & Ellis commissioned a report which was irrelevant to that

question but then wrongly asserted that it disposed of that question. They were unable to provide the information needed to determine whether the storage cupboards were ever included in the asbestos inspection or the subsequent works. While, by itself, this would not justify making a management order, it does not speak well of Prickett & Ellis's management.

Roof works

13. The Applicant's next complaint, concerning roof works, is the most serious. The Applicant points out that the Tribunal, in its decision of 14th January 2010, stated that the flat roof was coming to the end of its useful life. A specification of works provided to the Respondent in October 2009 by Keegans also suggested that the roof would be replaced.

14. However, in 2010 roof works were commissioned which only involved an overhaul at a cost of around £4,000. Works were again proposed to the roof in 2012. The Applicant draws the conclusion that the 2010 works were ineffective but the Tribunal does not have the evidence to state that definitively – in particular, Prickett & Ellis claimed in their letter of 5th March 2012 (described further below) that the area of the roof repaired in 2010 would not require repairing this time. What is more concerning is what happened next.

15. On 5th March 2012 Prickett & Ellis sent to each lessee a letter which purported to be the first stage of consultation required by the statutory consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003. Works were proposed for roof overhaul, asbestos removal, work to fire installations and perimeter fence repair.

16. The letter claimed that Prickett & Ellis had received a quote for roof repair for £14,550 plus VAT and another quote for roof replacement for £22,500 plus VAT. At no time since the letter, including at the hearing, were Prickett & Ellis able to produce a copy of either quote or say who had provided them.

17. The letter stated that Prickett & Ellis would get at least three independent contractors to quote for all the works. In the event, they obtained two quotes for roof works from a small firm, Dukes Roofing and Building Maintenance (see further below).

18. The letter further stated, "Should you wish to suggest a suitable builder, please do not hesitate to put us in touch as soon as possible. Quotes from builders and decorators will be submitted in 30 days with another formal Notice." The 30 days would have expired on 4th April 2012.

19. On 15th March 2012 Prickett & Ellis sent a letter headed "RE: Final Letter – Service Charge Payment / Roof Works". The letter stated that they recommended replacement of the roof and demanded payment of service charges including £29,750 for it. This sum was claimed to be based on a further quote but, again, Prickett & Ellis have not been able to produce a copy of this quote or say who provided it. The letter also claimed to attach a specification of works but the Applicant claimed it was not and none has been provided to the Tribunal.

20. On 19th March 2012 Prickett & Ellis's then property manager, Matthew Monsey, e-mailed lessees to say he had a further quote for £33,250 but put the costs at £27,850.25 for a total renewal of the roof and £18,750.50 for a "half renew and repair", being the aforementioned two quotes from Dukes, both with 5% management fees on top. The e-mail asked for everyone to vote on their preferred option. The Applicant and Dr Sinclair happened to be away and did not vote. They have asked for details of the vote but Prickett & Ellis have never been able to produce them.

21. On 22nd March 2013 Prickett & Ellis sent out a further letter claiming to be the final letter in the statutory consultation process, despite being nearly two weeks prior to the end of the statutory period for consultation. The letter claimed that there had been a majority vote in favour of the cheaper option.

22. Works were then carried out by the aforementioned Dukes. Their original estimate dated 10th March 2012 recommended the following works for £18,750.50:

- Remove top layer of felt
- Cut out felt where air bubbles have occurred
- Repair under felt and any holes within roof area
- Cover whole roof, up-stands & pipes with Sealoflex primer
- Cover roof with pink thick underlay / insulation 100mm
- Cover roof with Sealoflex CT system
- Clear away all rubbish to leave site clean & tidy.

23. Dukes's invoice of 21st March 2012 left out the third item but the price was not changed. A handwritten note on the copy provided to the Tribunal indicated that £10,000 was paid on 2nd April 2012 and the balance some time thereafter.

24. By letter dated 10th April 2012 the Applicant and Dr Sinclair protested both the procedure used and the decision not to replace the roof. By letter on the same date Prickett & Ellis defended their actions and claimed they had done the right thing. This was their position up to the

hearing, including in their written response to the application. However, at the hearing they correctly conceded for the first time that the procedure had not been carried out correctly. Mr Boyd said he would not do it the way it had been done.

25. In particular, Ms Fox and Mr Boyd blamed their erstwhile colleague, Mr Monsey. They had parted company when Mr Monsey attempted to set up his own business by taking clients from Prickett & Ellis until he was injuncted not to. Ms Fox and Mr Boyd asserted at the hearing that Prickett & Ellis had changed from Mr Monsey's day because he had been replaced with Mr Boyd.

26. The Tribunal accepts that Mr Boyd appears to be keen to make up for the mistakes of the past. However, the defence that there had been mistakes but changes of personnel and practice would mean that they would not be repeated was not raised until the hearing. The written response to the application denied the allegations and painted a picture that the Applicant was simply wrong to claim that there had been any errors or breaches of obligations. By not raising their alternative defence before the hearing, there had been no opportunity for either party to bring any evidence to bear on the issue.

27. In particular, there was no evidence that there had been any change at Prickett & Ellis other than Mr Boyd replacing Mr Monsey. Mr Boyd's background is in tenancy management. The subject property constitutes his first foray into leasehold building management. Prickett & Ellis's principal business is estate agency and Mr Boyd is part of a team of only four dealing with property management so he cannot call on more experienced colleagues for supervision or help. In the circumstances, the Tribunal must take what happened as an example of Prickett & Ellis's work rather than something exceptional or unlikely to be repeated.

28. Aside from the procedure used in deciding to carry out the works, there were problems with the works themselves. A decision was made not to go to the expense of scaffolding but to access the roof through a small hatch immediately outside the doors of two top-floor flats. The Tribunal is inclined to agree with the Applicant that this means the works cannot have included insulation works, as Dukes's specification claimed, because the insulation panels would not fit through the hatch. In e-mail correspondence Mr Monsey initially claimed that insulation had been installed but later conceded that the Applicant should get a refund for his share of a £2,400 saving from there being no scaffolding or insulation.

29. From its own inspection of the roof, the Tribunal is also inclined to agree with the Applicant that the only work carried out was the application of Sealoflex liquid sealant. It appears that, as well as there being no insulation installed, the felt was not replaced. Mr Monsey's

description of the works as "half renew and repair" cannot be regarded as accurate. Even taking into account the supposed £2,400 refund, the Tribunal is satisfied that the works actually carried out could not possibly justify the price paid. Prickett & Ellis, who charged a 5% management fee, are guilty of a complete lack of supervision of the roofing contractor which Mr Monsey tried to cover up with e-mails which were misleading at best.

30. On their original estimate of 10th March 2012, Dukes promised "a insurance guarantee for 15 years". The Applicant pressed for details of this guarantee without any luck. Prickett & Ellis eventually got Dukes to provide information indicating that the Sealoflex had a 15-year manufacturer's guarantee. This is not the same thing as an insurance-backed guarantee of the roofing work itself. Prickett & Ellis again allowed their contractor to provide a service significantly less than what was originally offered.

31. Dukes's quotes had stated that their prices included VAT. The Applicant protested that they were not VAT registered and sought a refund of any wrongly-paid VAT. Prickett & Ellis found out that Dukes were not VAT registered and that the reference to VAT had been in error. However, in their written response to the application they also, somewhat peculiarly, claimed that Dukes could charge VAT and were answerable only to HM Revenue & Customs for doing so. It appears that VAT was not charged but, again, Prickett & Ellis do not inspire confidence in their professionalism when suggesting that VAT may have been charged and that there was nothing they could or would do about it.

Sub-letting

32. The Tribunal were provided with a copy of the lease said to be standard across the six flats. Clause 3(h) contains an absolute covenant against dividing possession of the premises by assignment, underletting or parting with possession of part, save that there may be assignment, underletting or parting with possession in the last seven years of the term with the lessor's consent. The Applicant protested that some of his fellow lessees were sub-letting the garage which was part of their demise.

33. Prickett & Ellis accept that they are obliged to enforce such covenants. However, they appear to have confused clause 3(h) with clause 3(i) which provides that every transfer of the lease must be registered and that registration paid for. Clause 3(i) is a standard provision for ensuring that, when a lessee sells their flat, the lessor can find out who the buyer is. Clause 3(i) has nothing to do with sub-letting garages. However, Prickett & Ellis's response to the Applicant's complaint was to ask the lessee in question to refer themselves to their solicitors for a fee

to be paid. In this instance, Prickett & Ellis misread the lease and, as a result, failed to try to enforce a relevant covenant.

Garden maintenance

34. In paragraphs 23-31 of the decision of 14th January 2010, the Tribunal commented on the gardening service then provided. Paul Ross provided an ad hoc service for £14 per hour with monthly visits in winter increasing to fortnightly in summer and weekly in autumn. The Tribunal inspected the garden and described it as "in immaculate condition". They noted that the lessees had obtained only one alternative quote for just £100 less for the service charge year ending in 2009. They further stated,

> The [lessees] did not seem to appreciate that the gardening service with which they were being provided represented excellent value and a more extensive service than that quoted for by Greencrest at more or less the same price.

35. Dr Sinclair is a keen gardener and has helped out from time to time with the communal garden. She told the Tribunal that the garden has substantially deteriorated since the Applicant released Mr Ross in 2012 and allowed Prickett & Ellis to employ contract gardeners. On inspection she pointed to a number of dead trees, a lack of pruning, weeds in the flower beds and the stalks of Spanish bluebells which Mr Ross used to dig out. The Tribunal's members on this occasion do not have any relevant gardening expertise and it may well be that some lessees would be satisfied with the current state of the garden. However, it is clear that the garden can no longer be described as "immaculate" so that it has deteriorated from the condition observed by the previous Tribunal.

36. Prickett & Ellis claim to have used their best efforts to obtain suitable contract gardeners at a reasonable price, even arranging a change of contractors in response to the Applicant's complaints. However, the Applicant and Dr Sinclar do not dispute that the contractors are doing a reasonable job within the specification they have been given. The first contractor, Scott of SA Gardens, was apparently tasked with visiting 19 times per year at 1-2 hours per visit, a substantial drop from over 100 hours done by Mr Ross, at almost the same price (£1,850 instead of £2,000).

37. In the Tribunal's opinion, Mr Ross's service was a kind not often seen these days and it is understandable why the Applicant and Dr Sinclair are disappointed that he was let go. He may well be irreplaceable. The Tribunal is satisfied that, while the current service might be reasonable compared with other contract gardeners, it represents a deterioration from previous standards with no meaningful saving in cost. It is not clear that this is Prickett & Ellis's fault as such because some of the lessees clearly felt that their service charges were too high and argued

for a change to try to save money. In any event, they were wrong in relation to the gardening service. It should also have been clear that a change was not advantageous by comparing the work done by Mr Ross with the new contractor's proposed service.

Other considerations

38. The Tribunal is satisfied that the above matters constitute breaches of obligations which may provide grounds for exercising the power under section 24 of the Landlord and Tenant Act 1987 to order the appointment of a new manager. In considering whether it is just and equitable to make the order, there are also other considerations.

Views of other lessees

39. The Respondent's defence in these proceedings has consisted of Prickett & Ellis defending their own performance. However, Prickett & Ellis are only the Respondent's agents. In considering whether it is just and convenient to make a management order, it is important to consider the Respondent's circumstances and the views of its members, the other lessees.

40. One lessee, Mrs Packer, attended the Tribunal hearing. She explained that she and her fellow lessees were extremely dissatisfied with the service provided by RMG prior to 2009 and Mr Monsey of Prickett & Ellis was "like a breath of fresh air" when he replaced them. Communication improved and there were tangible improvements such as internal decorations.

41. However, Mrs Packer also conceded that she has never taken a close interest in the management of the building. The flat was her mother's until she passed away in April 2014 and she spent her time acting as her mother's principal carer. She said building management was not her field. She was not aware of whether or not she was a director of the Respondent company which she conceded was moribund for practical purposes. She said she did not see why the Applicant and the other lessees could not simply reach agreement rather than being in dispute.

42. Other lessees, namely Elinor Miller, Herve Amsili and Darren Johnston on behalf of Hytech Designs Ltd have all indicated in e-mails that they are willing for Prickett & Ellis to continue acting as the Respondent's managing agents. However, that is all their e-mails say. There is no reasoning to support their expressions of support. Even more significantly, there is no indication of their degree of interest in the property or its management, currently or in the future. Mr Boyd indicated that there were two lessees who had acquired their interests relatively recently who he thought might be willing to become more active but this implied that they had not been active to date.

43. A right to manage company cannot operate properly without the active involvement of at least some of its lessee members. At the moment it appears that Prickett & Ellis are not subject to any meaningful supervision from the Respondent and there is no realistic prospect of that changing. Perhaps the Tribunal's decision to make a management order in this case, thus bringing the right to manage to an end, will provide the motivation needed for lessees to get involved. It will always be open to a sufficiently active group of lessees to revive the right to manage and to seek to have the management order discharged. Unless and until that happens, the Tribunal is satisfied that coherent and proper management is more likely to be promoted by making a management order.

Prickett & Ellis's position

44. Prickett & Ellis have been faced with a lengthy list of complaints from the Applicant about their management. Their response has been considered above (see paragraphs 26 and 27) but there is a further aspect to it. Several times, Mr Boyd told the Tribunal he would take steps to consult the Applicant and do whatever it was he wanted. While this would provide some benefits, not least a more harmonious relationship with the principal complainant, conceding everything to whomever shouts loudest is no more good management than ignoring them would be. There is no substitute for an agent demonstrating that they have the qualifications, experience and knowledge to provide ongoing good management. As already mentioned, due to the way they chose to present their case, Prickett & Ellis did not provide the evidence which could do this.

The proposed manager

45. The Applicant proposed Mr James McCaghy of RMG as the manager to be appointed to manage the subject property in place of Prickett & Ellis. A written statement was provided from James Sturgeon, RMG's Business Development Manager, summarising their portfolio, staff complement and professional memberships, together with a short management plan, a draft service agreement and verification of their professional indemnity, crime and employers' liability insurance. The Tribunal was disappointed that Mr McCaghy's CV was not provided, as would be expected in these cases, but he did present himself at the hearing to answer any questions.

46. RMG manages a portfolio of 65,000 properties nationwide. Mr McCaghy's office has 12 managers managing 15-20,000 units, predominantly residential. Mr McCaghy has a degree in Estate Management from the University of Bedfordshire and began work in May 1999. He manages 17 developments with between 6 and 60 units each. He has not personally been appointed by a Tribunal before but he has been to Tribunal hearings and there is experience within his office

of such appointments. He can also rely on in-house legal advice although surveyors are brought in from other organisations. He was specifically asked how he would have dealt with whether scaffolding should be used for roofing works and said he would rely on a surveyor's advice.

47. Mr McCaghy sought an appointment for three years in the first instance. The basic fee would be £2,000 plus VAT for the year. This includes four site visits and an AGM. Additional services may be provided for a further fee, such as an annual health and safety inspection which costs £350 plus VAT.

48. Understandably, Mrs Packer expressed concern that RMG were the same managing agents she and her fellow lessees were so disappointed with before 2009 and whose performance led the Tribunal to cut their fees by 30% and to deny the Applicant his costs of the proceedings. Mr McCaghy pointed out that he had not been involved at that time and those who were are no longer with RMG. In about 2008 RMG was forming out of Erinaceous, a firm which had gone bust, and Mr McCaghy said that was a turbulent time, the implication being that they might not have been able to provide as good a service at that time as they should have done.

49. The Applicant pointed out that, although the Tribunal had been critical of RMG's communication, they had been satisfied with all other aspects of their management, upholding the reasonableness of all the other service charges. It would be hoped that the Tribunal's previous criticism would make RMG conscious of the need to maintain good communication and the Tribunal noted that the draft service agreement included a term that any queries should be responded to in two business days.

50. The Tribunal is satisfied that Mr McCaghy is suitable for appointment as the manager of the subject property. It should be pointed out to all parties that, if this turns out to have been wrong, there is a remedy in that any party may apply to the Tribunal for a variation or discharge of the management order.

Decision and Order

51. For the reasons set out above, the Tribunal is satisfied that the circumstances are such that it is just and equitable to appoint Mr McCaghy as the manager of the subject property on the terms set out in the order at Appendix 2 to this decision. Under section 105(4) of the Commonhold and Leasehold Reform Act 2002, the right to manage ceases to be exercisable by the Respondent when the order takes effect.

Name: NK Nicol **Date:** 22nd July 2014

Appendix 1 – relevant legislation

Landlord and Tenant Act 1987

PART II
APPOINTMENT OF MANAGERS BY THE COURT

S21 Tenant's right to apply to court for appointment of manager.

(1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to a leasehold valuation tribunal for an order under section 24 appointing a manager to act in relation to those premises.

(2) Subject to subsection (3), this Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.

(3) This Part does not apply to any such premises at a time when—

(a) the interest of the landlord in the premises is held by an exempt landlord or a resident landlord, or

(b) the premises are included within the functional land of any charity.

(3A) But this Part is not prevented from applying to any premises because the interest of the landlord in the premises is held by a resident landlord if at least one-half of the flats contained in the premises are held on long leases which are not tenancies to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) applies.

(4) An application for an order under section 24 may be made—

(a) jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section, and

(b) in respect of two or more premises to which this Part applies; and, in relation to any such joint application as is mentioned in paragraph (a), references in this Part to a single tenant shall be construed accordingly.

(5) Where the tenancy of a flat contained in any such premises is held by joint tenants, an application for an order under section 24 in respect of those premises may be made by any one or more of those tenants.

(6) An application to the court for it to exercise in relation to any premises any jurisdiction to appoint a receiver or manager shall not be made by a tenant (in his capacity as such) in any circumstances in which an application could be made by him for an order under section 24 appointing a manager to act in relation to those premises.

(7) References in this Part to a tenant do not include references to a tenant under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

S22 Preliminary notice by tenant.

(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)) 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 court 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 a leasehold valuation tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

(4) In a case where—

(a) a notice under this section has been served on the landlord, and

(b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage, the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.

S23 Application to court for appointment of manager.

(1) No application for an order under section 24 shall be made to a leasehold valuation tribunal unless—

(a) in a case where a notice has been served under section 22, either—

(i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the person required to take steps in pursuance of that paragraph having taken them, or

(ii) that paragraph was not applicable in the circumstances of the case; or

(b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either—

(i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or

(ii) no direction was given by the court when making the order.

S24 Appointment of manager by the court.

(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 court thinks fit.

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

(a) where the court 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

(iii) that it is just and convenient to make the order in all the circumstances of the case; or

(ab) where the court is satisfied—

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(aba) where the tribunal is satisfied—

(i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(ac) where the court is satisfied—

(i) that any relevant person has failed to comply with any relevant 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;

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

(2ZA) In this section "relevant person" means a person—

(a) on whom a notice has been served under section 22, or

(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable-

(a) if the amount is unreasonable having regard to the items for which it is payable,

(b) if the items for which it is payable are of an unnecessarily high standard, or

(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(3) The premises in respect of which an order is made under this section may, if the court thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4) An order under this section may make provision with respect to-

(a) such matters relating to the exercise by the manager of his functions under the order, and

(b) such incidental or ancillary matters,

as the court thinks fit; and, on any subsequent application made for the purpose by the manager, the court may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide—

(a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;

(b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;

(c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

(d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6) Any such order may be granted subject to such conditions as the court thinks fit, and in particular its operation may be suspended on terms fixed by the court.

(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 court 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).

(8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(9) A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the court may by order direct that the entry shall be cancelled.

(9A) The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—

(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and

(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

(10) An order made under this section shall not be discharged by a leasehold valuation tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.

Appendix 2 – Management Order

1. In this order

   a. 'the Property' means 188 Albert Road, London N22 7AH;

   b. 'the freeholders' includes any successors in title;

   c. 'the lessee' means a person holding under a long lease as defined by Section 59(3) of the Landlord and Tenant Act 1987 ('the Act')

2. It is ordered that:

   In accordance with section 24(1) of the Landlord and Tenant Act 1987 Mr James McCaghy of the Residential Management Group ("the Manager") be appointed Manager of the Property for a period of 3 years from 1st August 2014 ("the Period")

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

   (i) The Directions and Schedule of Functions and Services set out below;

   (ii) The rights and obligations of the landlord under the leases demising the flats;

   (iii) All relevant statutory requirements; and

   (iv) The requirements of the service charge Residential Management Code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State of England and Wales under Section 87 of the Leasehold Reform Housing and Urban Development Act 1993.

DIRECTIONS

1. From the date of appointment, and throughout his appointment, the Manager shall maintain a policy of professional indemnity insurance to cover his obligations and liabilities as Manager.

2. The parties to this application and Prickett & Ellis (as the Respondent's managing agents) shall, not later than 4 weeks from the date of this order, provide all necessary information to the Manager and arrange an orderly transfer of responsibilities. All accounts, books, records and funds shall be transferred, within 4 weeks, to the Manager.

3. The Manager is entitled to such disclosure of documents as held by the Respondent, their advisors or agents (including Prickett & Ellis) as is reasonably required for the proper management of the Property.

4. 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 on 4 weeks from the date of this order become the rights and liabilities of the Manager.

5. On the expiry of 12 months from the date of this order the Manager shall file with the Tribunal a brief report on the progress of the management of the property.

6. The Manager and the parties shall be entitled to apply to the Tribunal for further directions if so advised and/or in the event that circumstances necessitate such an application.

7. The Manager shall be entitled to remuneration as set out below.

SCHEDULE OF FUNCTIONS AND SERVICES

SERVICE CHARGES AND RENT

1.1 Prepare an annual service charge budget, administer the service charge and prepare appropriate accounts in accordance with the relevant leases and any relevant Code of Practice.

1.2 Demand and collect rents, service charges, insurance premiums and any other payments arising under the relevant leases as appropriate.

1.3 Hold all monies received pursuant to this order and/or pursuant to the lease provisions as a trustee, in an interest bearing account (if appropriate), pending such monies being defrayed.

1.4 The Manager shall be entitled to take such action and court or tribunals proceedings as may be necessary to collect the service charge or rent arrears and to take such court action as may be necessary or desirable to secure compliance with the lessees obligations under the leases relating to the flats in the Property.

ACCOUNTS

2.1 Prepare an annual statement of account for the freeholders and the lessees, detailing all monies received and expended and held-over or held by way of reserve fund. The accounts shall be certified by an external auditor, if permissible under the lease provisions.

2.2 Produce for inspection by the freeholders and/or lessees, invoices, receipts or other evidence of expenditure.

2.3 All monies collected on the freeholders' behalf will be accounted for in accordance with any relevant RICS Code of Practice.

MAINTENANCE AND MANAGEMENT

3.1 Arrange, manage and where appropriate supervise all repair and maintenance, building work and service contracts applicable to the property and instruct contractors to attend to the same, as appropriate.

3.2 Give consideration to the works to be carried out to the property, in the interest of good estate management and make appropriate recommendations to the landlord and lessees. Set up a planned maintenance programme, as appropriate.

3.3 Ensure that all necessary and relevant statutory consultation exercises are undertaken in relation to all qualifying works and any qualifying long term agreements. Similarly, with regard to the future appointment of managing agents the Manager, before the expiry of the Period (or any extended period)

shall undertake, as appropriate, a consultation exercise in connection with any such appointment.

FEES

4. The Manager shall be entitled to charge the following management fees:

4.1 During the first year of this order:

a. A fee not to exceed £2,000 per annum plus VAT for the basic management duties in accordance with the current RICS Code,

b. Reasonable fees for work outside basic management duties at an hourly rate not to exceed £100 + VAT,

c. Surveying fees for major works if required not to exceed 12% of the contract sum plus VAT.

4.2 In the second and third year of this order the basic fee first mentioned above may be increased in line with the Retail Price Index.