



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

Case Reference : LON/00BK/LAM/2013/0029

Property : March House, 13-15 Westbourne Street, London W2 2TZ

Applicant : Dr Shakeib Arshad (1)
Mrs Mary Banks (2)

Representative : In person

Respondent : March House Freehold Limited (1)
13-15 Westbourne Street Limited (2)

Representative : Mr Ralph Wynne-Griffiths (Counsel)

Type of Application : Appointment of a Manager – Section 24 of Landlord and Tenant Act 1985

Tribunal Members : Mr Jeremy Donegan (Tribunal Judge)
Mrs Susan Coughlin (Professional Member)

Date and venue of Hearing : 17 and 18 March 2014
10 Alfred Place, London WC1E 7LR

Date of Decision : 15 May 2014

DECISION

Decisions of the tribunal

- (1) The tribunal refuses the application for the appointment of a Manager for March House, 13-15 Westbourne Street, London W2 2TZ (“the Building”).
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”).

The application

1. The Applicants seek the appointment of a Manager under section 24 of the Landlord and Tenant Act 1987 (“the 1987 Act”). They also seek an order under section 20C of the 1985 Act so that none of the Respondents’ costs of the tribunal proceedings may be passed to the Applicants through any service charge.
2. An oral pre-trial review took place on 22 October 2013 when directions were given, which included provision for the parties to serve statements of case, witness statements and experts’ reports. The directions also required the Applicants to give details of the proposed Manager, who was to provide a statement of his residential management experience together with any management plan, proposed remuneration and details of any professional indemnity insurance.
3. The application was originally issued by the First Applicant, Dr Arshad. After the directions were issued the Second Applicant, Mrs Banks and a Mr Charles Delaney were added as applicants to the case at their request. Mr Delaney subsequently requested that he be removed as an applicant, on 10 January 2014. The grounds of his request were that new managing agents had been appointed for the Building and the Respondents had appointed two new directors. Mr Delaney was removed as an applicant on 22 January 2013.
4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. The tribunal heard evidence and submissions from the parties over two days. The Applicants appeared at the hearing in person and the Respondents were represented by Mr Wynne-Griffiths of Counsel.
6. The tribunal were supplied with a bundle of documents in accordance with the directions, which ran to 369 pages and included copies of the application, directions, Applicants’ leases and relevant correspondence

and documents. The bundle also included certain correspondence that was marked “without prejudice save as to costs” and the parties agreed that this should be removed.

7. During the course of the hearing and with the agreement of the Applicants Mr Wynne-Griffiths supplied the tribunal with recent cleaning reports from Reef Water Solutions (“Reef”). He also handed in a helpful chronology.
8. None of the parties requested an inspection of the Building and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The background

9. The Building is a listed, purpose built block of 13 flats, which forms part of the Hyde Park Estate. Dr Arshad is the leaseholder of Flat 3 on the ground floor. Mrs Banks is the leaseholder of Flat 8 on the second floor.
10. The First Respondent is the freeholder of the Building. The Second Respondent is the management company, which is a party to all leases save that for Flat 3. The shareholders in both companies are leaseholders of flats at the Building.
11. The application concerns the communal hot water and central heating system at the Building. On 26 August 2013 the First Applicant served a preliminary notice on Mrs Elena Ellis and Mr Carl Montgomery under section 22 of the 1987 Act. Mrs Ellis and Mr Montgomery are each directors of the two Respondent companies.
12. The preliminary notice asked that the “*The heating system in my front room is restored to full functionality by the landlord*”. The deadline stated for compliance was 14 September 2013. The notice also asked the Respondents to take the following steps, to restore the heating system:
 - *Power-flushing the communal system (and then reintroducing chemical treatment for future protection)*
 - *Replacing pipework outside the flat which is found to contain debris that could not be cleared by flushing*
 - *Replacing pipework and/or radiators inside Flat 3, which may now have accumulated debris again, that could not be cleared by flushing*

There was no response to the notice from the Respondents.

13. The Applicants each hold a long lease of their respective flats. The specific provisions of the leases are referred to below, where appropriate.

The leases

14. The lease of Flat 3 was granted by the Church Commissioners for England ("the Lessors") to Mrs Ronit Akirov ("the Lessee") on 23 July 1999, for a term of 99 years commencing on 24 June 1982.
15. The demised premises are defined in the first schedule as:

ALL THAT ground floor flat known as Number 3 (hereinafter called "the demised premises") as the same is delineated and coloured pink and edged red on the plan annexed hereto situate in the Building known as Number 13-15 Westbourne Street London W2 including the non-structural finishings floorboards screeds plaster and covering to the ceiling floors and walls thereof the internal non-structural walls dividing the rooms comprising the demised premises and all doors door frames windows window frames cisterns tanks drains pipes wire ducts and conduits used or intended to be used solely for the purposes of the demised premises but excluding the roof foundations structural floors walls columns and beams which are load-bearing or structural and the external walls of the Building and painted or varnished external surfaces of the external doors and windows of the demised premises....

16. The Lessee's covenants are to be found in the fifth schedule and include the following obligations:

2. Repairs by Lessee

- (a) *During the continuance of the said term keep the interior of the demised premises (including non-structural walls the front entrance door and the locks fitted thereto and other doors door frames ceilings floors windows window frames glazing pipes radiators (if any) and the water and sanitary apparatus the electrical installation and all fixtures fittings and other appurtenances thereof) substantially repaired and maintained renewed amended.....*

6. Yielding up

On the termination of the said term peaceably yield up unto the Lessors the demised premises in a good and tenantable state of repair

and condition having regard to and in accordance with the covenants by the Lessee herein contained together with all additions and improvements thereto AND all fixtures or fittings of every kind now in or upon the demised premises or which during the said term may be affixed or fastened to or upon the same shall however fixed or set up be deemed to be landlords' fixtures for the purposes of these presents and shall at the termination of the said term be left complete with all parts and appurtenances thereof and in proper working order and conditionPROVIDED FURTHER that the Lessee may from time to time (but only with the previous written consent of the Lessors and subject to any condition thereby imposed) substitute for any of the said fixtures or fittings other fixtures or fittings of at least as good a kind and quality as and not less suitable in character nor of less value than those for which they are respectively to be substituted and in any such case the covenant hereinbefore contained shall attach and apply to the things so substituted

17. The Lessors' covenants are to be found in the seventh schedule and the relevant sections are set out below:

PART I

(Covenants by the Lessor)

For quiet enjoyment

THAT the Lessee paying the said rent and performing and observing all of the covenants agreements and provisions on the part of the Lessee herein contained shall quietly enjoy the demised premises during the term hereby granted without interruption by the Lessors or any person claiming through or under them

PART II

2. *THAT the Lessors will provide the services mentioned in Part III of this Schedule but so that*

- (a) *they shall not be under any liability for any failure in the performance of this obligation or for any interruption in the provision of such services from any cause unless such cause arises from or is contributed to by the negligence of the Lessors or their servants or agents acting in the course of their employment*

PART III

“The Reserved Property” means FIRSTLY the approaches and all other parts of the Building which are or may be used in common by or for the benefit of the tenants and occupiers of all the flats in the Building and the house equipment or apparatus used for providing services for the benefit of the tenants and occupiers of all the said flats and SECONDLY all those structural walls roofs foundations and balconies and front basement vaults of the Building (including the external painted or varnished surfaces of windows) and all sewers drains pipes wires vents ducts and conduits (excluding those parts which are included in any demise of an individual flat):

That the Lessors will: -

1. Repairs

Carry out such works of maintenance repair and replacement as are in the opinion of the Lessors necessary and proper for maintaining and keeping all the Reserved Property in tenantable repair and condition the Lessee giving all reasonable and proper access to the demised premises therefore as required by the Lessors

2. General Expenses

Supply maintain and operate the plant equipment and other apparatus as the Lessors shall consider necessary for the provision of common services in or about the Reserved Property

6. Maintenance of fixtures etc

Repair and maintain and replace any of the furniture apparatus equipment fixtures fittings floor coverings and other things in and about the Reserved Property including (but without prejudice to the generality of the foregoing) all electric apparatus and cabling and time switches

14. Hot Water and Central Heating

Provide a supply of hot water to the taps in the demised premises throughout the year and to the radiators in the demised premises from the 1st day of October to the 30th day of April in each year

18. The lease of Flat 8 was dated 27 September 2007 and is in a similar format to that for Flat 3. However it is tripartite and was made between the First Respondent (“the Landlord”), the Second Respondent (“the Management Company”) and the Second Application (“the Tenant”). It is the Second Respondent which covenants to perform the obligations in parts II and III of the seventh schedule to the lease and the

obligation to provide the hot water supply is to be found at clause 13 of this schedule. The wording of this clause is the same as clause 14 in the seventh schedule to the lease for Flat 3.

The issues

19. At the start of the hearing Dr Arshad identified the following alleged breaches of the leases, on the part of the Respondents, as the basis for the Manager application:
 - (i) A failure to supply hot water to the radiators in the flats (clause 13/14 of seventh schedule);
 - (ii) A failure to provide quiet enjoyment of the flats (part I of seventh schedule); and
 - (iii) A failure to pay compensation arising from the damage to the radiators in Flat 3 and consequential damage to wooden flooring in this flat.
20. The tribunal explained to the parties that it was satisfied that there had been a breach of the leases that related to the management of the Building it would then need to consider whether it was just and convenient to appoint a Manager in all the circumstances of the case. The tribunal also explained that it was not in a position to make an award of compensation if it concluded that a breach of the leases had occurred. Rather this would be a matter for the County Court.
21. The section 22 notice and the original application contained various other allegations of impropriety on the part of the Respondents and Mr Montgomery. The tribunal pointed out that these were not relevant to the issues to be determined.

The Applicants' evidence

22. Both Dr Arshad and Mrs Banks gave oral evidence. The tribunal also heard from Dr Arshad's heating engineer, Mr Nicholas Harris and the proposed Manager, Mr Michael Kohn. The tribunal also considered all of the Applicants' evidence in the bundle including a detailed statement from Dr Arshad, short statements from Mrs Banks and her heating engineer, Mr Duncan Searle, two short reports from Mr Harris and a management plan from Mr Kohn.
23. The Applicants' evidence is summarised below.

Mrs Banks

24. Mrs Banks has lived in Flat 8 since 1992. She started to experience a lack of heat from the original cast iron radiator in her bedroom in 2010. The radiator became progressively cooler. By early 2011 it was not working at all, even though the other radiators in the flat were fully functioning. Mrs Banks asked the then managing agents, Farrar and Co, to bleed/vent the bedroom radiator believing that there was air in the pipes. This was delayed until May 2011, when the whole heating system was turned off. At that point the plumber instructed by Farrar advised that he was unable to bleed air from the radiator as the valve was no longer working.
25. Farrar advised Mrs Banks' that the maintenance of the radiator was her responsibility and after some delay confirmed that she could use a plumber of her choosing to undertake the necessary work. Farrar did not place any restrictions on the work to be undertaken to the radiator. Mrs Banks accepted in cross-examination that she had not arranged any maintenance of the radiator prior to 2011.
26. Mrs Banks then consulted Mr Searle of ADC Knightstar, who is a registered Gas Safety Engineer. He attended Flat 3 on 13 September 2011 and found that the pipes leading to the radiator were full of debris and sludge, made it unserviceable and necessitated its replacement. It took Mr Searle approximately 2 hours to clear the pipes of sludge before the new radiator, which is made of stainless steel, could be fitted.
27. In his statement, Mr Searle expresses the view that *"...there had not been any effective power flushing done to this section of the communal heating system and in my opinion there had never been any chemical inhibitor added to this system prior to my visit, which may have prevented the problem"*. He also stated that *"The use of steel radiators with older pipes of a different metal should not affect their functioning if suitable and adequate inhibitor is added to the system"*.
28. The cost of replacing the radiator in Flat 8 was approximately £1,000. The new radiator has been working perfectly in conjunction with the old pipes that it is fitted to.

Dr Arshad

29. Dr Arshad holds a doctorate in nuclear engineering and was a director of the Respondent companies between 2002 and 2011. He lived in Flat 3 from 2002 until 2008, when he moved to Spain. Since that time the flat has been sublet. There are a total of four radiators in this flat, one in each bedroom and two in the combined living/dining room.

30. Dr Arshad stated that during his period of occupation the radiators in the flat were "*piping hot*". However he says there have been numerous problems with the radiators and the heating system during the last 5 years, which he attributes to sludge in the system. The Applicants allege that the Respondents have taken no effective action to remedy these problems.
31. On 17 May 2009 the then subtenant, Narendan Ramachandran, reported a burst radiator pipe in the main bedroom, which was leaking water onto the floor. The radiator in question had only been fitted four months previously and was made of steel. At that point the other three radiators in the flat were all cast iron.
32. Dr Arshad reported the problem to Mr Montgomery who arranged for the Respondents' heating engineers, Aspect Maintenance Services ("*Aspect*"), to inspect the radiator and pipes. Aspect sent an email to Dr Arshad on 18 May 2009 stating that the radiator was cracked and would need replacing. It went onto say "*The reason the radiator cracked was as there was Rust inside the radiator causing damage. To avoid this happening, the system needs to be power flushed once a year to avoid the corroding and rusting of the central heating system*".
33. Dr Arshad also relies on an email from Ms Anna Ellis dated 21 May 2009. She is the daughter of Mrs Ellis, the leaseholder of Flat 1. The email explained that two of the radiators in Flat 1 had also burst. Ms Ellis also stated that she had been advised by her plumber this was due to the "*..appalling condition of the water..*".
34. Dr Arshad subsequently sent an email to Farrar, advising them of the need to replace the radiator in Flat 3 and asking whether there were "*..any special instructions*". The copy of the email in the bundle was undated but Mr Joe Starkey of Farrar responded on 13 July 2009. His email of that date stated "*Thank you for letting me know regarding the radiator. As this is within your flat, you do not need the company's permission*".
35. Emails were exchanged between Dr Arshad and Mr Montgomery in September 2009. In an email dated 22 September 2009, Mr Montgomery referred to the "*The central heating system is an open system with cast iron radiators*". Dr Arshad responded on the same date, asking "*Is it recommended to install cast iron radiators?*" He says that there was no response from Mr Montgomery.
36. Following complaints from his subtenant Dr Arshad sent an email to Mr Starkey on 07 January 2010 stating "*I am informed that two radiators in my flat have recently been losing temperature. I had a heating engineer in today who says that there is a need for power flushing*". Dr Arshad then sent a chasing email to Mr Starkey on 12 January 2010, who responded on the same date. In his response email,

Mr Starkey said of the heating system, *"One of the causes for concern was the fact that the system had developed a sludge type material that could inhibit some of the heat from the radiators in various places"*.

37. Dr Arshad referred the tribunal to letters/reports from Commercial and Domestic Boiler Repairs Limited ("CDBRL"). CDBRL were instructed by Farrar and Co to investigate the heating problems in Flat 3 and elsewhere in the Building. In a letter dated 16 December 2011, they recommended that the heating system be power flushed *"..in order to clear deposits and sludge in the radiators in the building"*.
38. On 11 January 2012, CDBRL wrote to Mr Starkey and stated *"Currently, we believe the heating system is not effective and not up to a minimum standard"*. They recommended a *"..clean-up of the whole system.."* but that a power flush might not be appropriate and that they should *"..undertake a survey of the system before finalising our recommendations and pricing.."*. CDBRL also stated that radiators and valves in Flat 3 might need replacement after the clean-up of the system and then went onto say *"The type of radiator installed would make no difference as far as this problem is concerned"*.
39. CDBRL undertook a power flush of Flat 3 on 03 February 2012 and reported their findings in a letter dated 08 February 2012. This stated that *"..the system was found to be blocked with excessive inert thick black magnetite sludge and hard iron oxide deposits which had caused a total blockage to the various radiators in Flat 3"*. CDBRL concluded that *"..excessive amounts of sludge/iron oxide deposits are contained within the supply pipework leading to Flat 3, probably within the main risers outside the flat"*. Their recommended solution was to *"..power flush from the boiler room the system pipework (risers etc) at March House. This would result in the removal of the black magnetite sludge and iron oxide deposits from the system thereby restoring flow to the various radiators"*.
40. Reef carried out a 4 stage flush and chemical cleaning of the heating system in October 2010. Dr Arshad makes two specific criticisms of the Respondents:
 - (a) There was no flushing of the system between 2005 and October 2010, to prevent or reduce the build-up of sludge; and
 - (b) There is no evidence that power flushing was carried out either in October 2010 nor since that time, notwithstanding the recommendation made by CDBRL.
41. Dr Arshad contends that the Respondents are responsible for the sludge in the communal heating system. He referred the tribunal to photographs in the report from the Respondents' expert witness, Mr

Richard McGuire, dated 27 January 2014. These show brown sludge marks on the walls in his flat, adjacent to the radiators. In cross-examination, Dr Arshad accepted that the pipes in his flat were no longer blocked by sludge. The water in the pipes is flowing better but is still lukewarm. It is dark brown in colour, which suggests that there is sludge elsewhere in the heating system.

42. Dr Arshad also relied on various thermal images of the radiators in Flat 3 that were contained in Mr McGuire's report and which were taken during an inspection on 30 December 2013. Paragraphs 4.2.4 -4.2.6 contained images of the radiator in the living area and identified that the flow inlet pipe temperature (thermal) was 35.9C. The radiator temperature was 24.0C, which was uniform over the face area of the radiator, except for a warmer band of water a cross the bottom. The peak pipe surface temperature on the steel pipe, carrying flow water to the radiator, was 37.3C. After venting the flow inlet surface pipe temperature (thermal) dropped slightly 36.5C but the central square radiator temperature had increase to 29.6C.
43. Paragraph 4.2.7 of the report contains thermal images of the radiator and steel flow pipe in the dining area. The image of the radiator shows a cooler band along the bottom, which Dr Arshad attributes to sludge.
44. Dr Arshad has now replaced all of the radiators in Flat 3. The current radiators in the bedrooms and the dining area are all mild steel. The current radiator in the living area is aluminium. The radiators in the bedrooms, at the rear of the flat, are working satisfactorily. The radiators in the dining and living areas, at the front of the flat are lukewarm and do not generate sufficient heat.
45. Dr Arshad exchanged further emails with Mr Starkey, regarding the heating system, in 2012 and 2013. In an email dated 21 December 2012 he wrote *"I have now installed a new wide bore radiator system in my flat, after observing some improvement in the water quality following the series of recent clean-ups. Unfortunately the new installation is not working properly – it gets warm but not hot"*.
46. In an email dated 05 April 2013, Mr Starkey reported various findings from the Respondents' heating engineers and which concluded:

"The new radiators in the front room of flat 3 March House have been connected in an extremely poor manner. There is a reducer to 15mm copper from the heating flow on each radiator, valves and 3 No. 90 degree elbows on one and 5 No. 90 degrees elbow on the other, which are all creating added resistance to the heating flow. This is why the radiators do not work as the heating flow is bypassing the radiators due to the increase in pressure.

Therefore in conclusion these radiators will not function correctly due to the way they have been installed”

Dr Arshad disputed these conclusions in a response email dated 10 April 2013.

47. Dr Arshad also corresponded with Mrs Ellis and Mr Montgomery. On 18 July 2013 he sent them an email asking “*Will the landlord restore the heating in my front room to the original condition, before sludge from the communal system rendered it dysfunctional?*”. Mr Montgomery responded by email on 31 July 2013, stating “*The Landlord’s Professional Advisers – Price Building Services Ltd, Maracom Group Limited, Reef Water Solutions – all have stated that “the problems in flat 3 lie with the radiators and pipework installed by Your Plumbers”*”. Reports from Price Building Services Limited, dated 04 April and 24 June 2013 were included in the bundle. These both attributed the problems with the radiators in the front sitting/room dining room to the manner of installation.
48. In August 2013 one of the radiators in Flat 3 ruptured, which Dr Arshad attributes to corrosion. He notified Mr Starkey, Mrs Ellis and Mr Montgomery of the problem in an email dated 19 August 2013. This included a photograph of the top of the radiator, showing sludge stains.
49. Dr Arshad also relies on an email from his current subtenant, Ms Freya Boehm, dated 01 January 2014, which concludes “*However it is very cold in the flat especially in the living room/kitchen where we spent most of our time and I really hope that the heating issue can be fixed very soon*”.
50. Dr Arshad does not accept the conclusions reached by the Respondents’ expert, Mr McGuire, who criticises the replacement of the original cast iron radiators and the new pipework fitted when the radiators were replaced. In particular he attributes at least part of the current problem to the number of bends in the pipework. Dr Arshad points out that Mr Starkey did not stipulate that only cast iron radiators should be fitted in his email of 13 July 2009. Further CDBRL have advised that the type of radiator installed would make no difference.
51. In addition to the heating issue, there has also been a problem with alleged leaks from Flat 3 into Flat 5 below. This prompted a flurry of correspondence between the Respondents’ former solicitors, KDL Law and Dr Arshad and his solicitors, Freemans, in the spring and summer of 2012. On 14 August 2012, Freemans wrote to Farrar demanding payment of a sum of £4,441.58, for the cost of work to the heating system and replacing in Flat 3 along with the cost of replacing the wooden flooring that was damaged by a bursting radiator. The Respondents have not paid any sum to Dr Arshad to compensate him for these alleged losses.

Mr Harris

52. Mr Harris is a registered Gas Service Engineer and has been working in this field since 1977. He used to work for British Gas before setting up his current business, Heatsave Installations, in 1985. Mr Harris was trained on both one and two pipe design heating systems.
53. Mr Harris prepared an inspection report on the radiators in Flat 3 on 02 September 2013, which stated that a new modern radiator should last at least 10 years in a well maintained heating system. Mr Harris expressed the opinion that the installation of the radiators in the front sitting/dining room was satisfactory and concluded that if the radiators were not heating then was because “*..the iron pipes before and after the isolating valve are blocked from corrosion and sludge..*”.
54. Mr Harris was then asked by Dr Arshad to check the water circulation in the radiators in the front sitting/dining room. In oral evidence he described the temperature of the radiators as “tepid”. Mr Harris produced a further report dated 18 January 2014, detailing the outcome of water flow tests to these radiators. He removed the radiator below the small window and found the water very dark in colour. Mr Harris also fitted a 15mm hosepipe to the flow pipe of the heating system and allowed the water to run into a bucket. The water flowed through very fast and dark. Mr Harris repeated this exercise with the return pipe, with the same results.
55. Mr Harris then attached the hosepipe to both the flow and the return of the heating system and the hose did not heat up. This led him to the conclusion that the water being supplied to the radiator was lukewarm. In his view the problem lay with the communal heating system, as opposed to the radiators or their installation. The dark colour of the water indicates sludge in the heating system, which can block pipes and restrict the flow of water.

Mr Kohn

56. The Applicants nominated Mr Kohn as the proposed Manager for the Building. They selected him after looking at 4 agents who manage similar properties and after interviewing 3 of those agents. Mr Kohn was selected, as he had experience of taking over a poorly run property from a much larger agent and bringing it up to standard.
57. Mr Kohn is a Member of the Royal Institution of Chartered Surveyors and is a director of Mylako Limited, Chartered Surveyors and Property Consultants, which he set up approximately 8 years ago. Mylako's offices are based at Zetland House, 5-25 Scrutton Street, London EC2A 4HJ. They manage approximately 487 properties in London, of which approximately 70 are within a Conservation Area and Listed.

58. Mylako has professional indemnity insurance cover of £1,000,000 for each claim and have considerable experience of managing residential, commercial and mixed use blocks. Their proposed management fee for the Building would be £4,095 plus VAT, per annum. This equates to £315 plus VAT, per flat per annum.
59. The bundle contained a management plan from Mr Kohn dated 05 February 2014, outlining the service that Mylako would provide for the Building. It also gave the names and contact details for three referees.
60. Mr Kohn has experience of managing properties with communal hot water systems and uses the services of water treatment specialists and heating engineers, with appropriate expertise. He also has experience of dealing with water leaks and has a contract with a local plumber who undertakes preventative checks on blocks that Mylako manage.
61. Mr Kohn has no experience of Manager appointments by the tribunal but is familiar with the Building, as he manages a nearby block and has visited the Building on one occasion.

Summary of Applicants' case and submissions

62. In summary the Applicants complain of the following matters:
 - (i) A failure by the Respondents to supply hot water to the radiators in their flats. In the case of Mrs Banks, this breach has now been remedied in that her new radiators generate adequate heat. In the case of Dr Arshad, the breach is continuing.
 - (ii) A failure by the Respondents to prevent or treat the build-up of sludge in the communal heating system.
 - (iii) The failure to supply hot water and to properly address the sludge problem amounts to a breach of the covenant for quiet enjoyment. Dr Arshad has received numerous complaints from his subtenants, regarding the lack of heat from the radiators. He has replaced the radiators and done all he can to rectify the problem. The problem is continuing and Dr Arshad has been obliged to engage in lengthy correspondence and time consuming correspondence with Farrar and Co and the Respondents.
 - (iv) The Respondents have failed to compensate Dr Arshad for the financial losses that he has suffered, as demanded by his solicitors and which arise from the negligence of the Respondents or their managing agents.

63. The Applicants attribute the problems at the Building to the Respondents' management style. The directors have adopted a very hands on approach, which interferes with the proper management of the Building. All decisions are taken by the directors rather than the professional agents. As a consequence Farrar and Co have recently resigned as managing agents.
64. The Applicants contend that it is just and convenient to appoint a Manager for the Building, given the long history of problems with the heating system and the directors' management style. Many of the shareholders in the two companies live overseas, which increases the need for a professionally qualified Manager "*on the ground*", who will be accountable to the Tribunal.
65. The Applicants have not pursued the case lightly. They have tried to resolve the dispute informally and through correspondence. Dr Arshad criticises the Respondents for failing to take effective action to resolve the problem with the heating system in the last five years. The Applicants do not want to perpetuate the dispute but are concerned that the Building is on the "*wrong track*". It is in everyone's interests if the Building and flats are well looked after. The best way to achieve this is the appointment of a Manager, who will be able to act independently of the Respondents.

The Respondents' evidence

66. The Respondents' principle witness was their expert, Mr McGuire. He gave oral evidence to the tribunal on the first afternoon of the hearing, in which he expanded upon the matters covered by his report dated 27 January 2014. The tribunal also heard oral evidence from Mrs Ellis, Mr Montgomery and a newly appointed director of the Respondent companies, Mr Toby Meijlink.
67. The tribunal also considered all of the Respondents' evidence in the bundle including Mr McGuire's report and statements from Mrs Ellis, Mr Montgomery and Mr Meijlink.
68. The Respondents' evidence is summarised below.

Mr McGuire

69. Mr McGuire is a Chartered Engineer and Director of Waterfield Odham & Associates Limited. His area of expertise is as a building services, mechanical systems design engineer and details of his qualifications and experience were appended to his report.
70. Mr McGuire's report primarily dealt with the heating problems in Flat 3 and the cause of those problems. He also addressed the sludge issue

and whether the heating water is contaminated. The report was prepared following a site inspection on 30 December 2013, when Mr McGuire gained access to Flats 1 (basement), 3 and 6 (first floor) and the basement boiler room. Mr McGuire was supplied with various documents by the Respondents' solicitors, including Dr Arshad's lease, the reports from CDBRL, PBSL, Reef, the initial report from Mr Harris dated 02 September 2013 and reports from Maracom Commercial Heating Engineers ("MCHE").

71. Mr McGuire's report gave brief details of the communal heating system, which is served from a single boiler located in the basement boiler room at the rear of the Building. There is a separate boiler for the domestic hot water system.
72. The heating system, as originally installed, incorporates steel pipes and cast iron radiators and serves the flats, ground floor entrance hall and rear of building staircase. The system is of the atmospheric type with feed and expansion tank located in the roof void. Heating water is pumped around the system by a single pump unit located in the common system return pipe, in the boiler room.
73. Mr McGuire believes that there is a one-pipe system serving the 11 flats between the ground and third floors, as well as the communal area and that there may be a two pipe system serving Flat 1 and the Mews Flat (also in the basement). In cross-examination, Mr McGuire also stated that the radiators in the bedrooms in Flat 3 could be on the two-pipe system.
74. The report provided details of one and two-pipe systems and explained that with a one-pipe system the temperature of water in the flow pipe reduces as it passes along the system, due to a mixing of proportion of cooler water from the branch circuit radiator outlet pipe with the common flow water temperature. It follows that the surface temperature of the radiators reduces as you work along the system (unless the heat valve is adjusted). The radiators in the sitting/dining room in Flat 3 are at the end of the run on the one-pipe system, where the water temperature is at its lowest.
75. Mr McGuire pointed out that the original heating system was designed on the basis of achieving room temperatures appropriate at the time the Building was constructed, in the late 1940s. These were lower than current day expectations and this should be borne in mind, when assessing the effectiveness of the heating system and the surface temperature of the radiators in Flat 3.
76. Mr McGuire also provided general information regarding corrosion and explained how magnetite (black sludge) and hermetite (red sludge) could be formed in heating systems. Both types of sludge are formed by the corrosion of the insides of the pipework, radiators, boiler and other

metal fittings in the heating system over time. Magnetite is heavier than water and tends to settle in the pipes and radiators in a heating system. Hermetite normally remains in the top of the system, typically in the header tank. The effect of sludge is to narrow the opening in pipes within the system. As the sludge deposits grow the pipe gradually closes up until it is blocked completely.

77. The report provided details of the pipework and radiators in Flat 3 and included various thermal images and photographs of the pipes and radiators, as commented upon by Dr Arshad. Mr McGuire advised that it was not unusual to have a cooler section at the bottom of steel panel radiators, as shown in some of the thermal images, as the hot water is directed upwards by the internal design of the radiator.
78. At the time of Mr McGuire's inspection the boiler thermostat was set at 70C and the outside air temperature was 11C. The temperature of the water entering the radiators in the sitting/dining room of Flat 3 was 37-38C, which would give an air temperature of 14-15C.
79. Mr McGuire advised that the water temperature will fluctuate, depending on a number of different factors including resistance within the system. The two most recent reports from Reef gave water temperature readings from the flow and return pipes in the boiler room of 68.4C and 66.8C on 21 February 2014 and 69.2C and 66.2C on 05 February 2014. These suggest very little reduction in the temperature of the water as it circulated through the system.
80. Based on his inspection and consideration of the various documents, Mr McGuire reached a number of conclusions, including:
 - (a) The heating system water was and has always been of an acceptable standard;
 - (b) There is no detriment or disadvantage in terms of compatibility between cast iron and steel but the Respondents' *"policy"* to only allow replacement cast iron radiators and use of steel pipes is correct, to ensure optimal performance of the heating system;
 - (c) There have been modifications to the radiators and pipes in Flat 3, which are contrary to the Respondents' policy;
 - (d) The two bedroom radiator installations could remain, as they are operating without complaint or problems;
 - (e) The aluminium radiator in the sitting room area gives cause for concern, as the combination of copper and aluminium or aluminium and steel is far from desirable and increases the risk of corrosion;

- (f) Mr McGuire recommends that the aluminium radiator is replaced with a larger cast iron radiator with steel pipes and that the unwanted, additional copper flow pipes, valves and surplus fittings are removed;
 - (g) The steel radiator in the dining room area can remain but with new 3/4" steel pipes;
 - (h) A new heating boiler was installed in 2010 and there has been appropriate testing and flushing of the heating system since that time, as evidenced by the reports from Reef and Maracom;
 - (i) Analysis of the heating system by Reef in October 2010 showed the water quality to be acceptable;
 - (j) The communal piping and cast iron radiators have exceeded their guideline life expectancy but can be expected to last at least another 10 years;
 - (k) There are no signs of any detriment as a result of the heating system not being treated with chemicals before 2010;
 - (l) The level of maintenance of the communal heating system was appropriate for the type of system installed; and
 - (m) No additional tasks need to be considered over and above those already in place, for the maintenance of the communal heating system. Mr McGuire recommends that a side stream magnetite filter/strainer be fitted in the boiler room, to collect any build-up or residual magnetite deposits.
81. On the second morning of the hearing, Mr Wynne-Griffiths made an application to adduce further documents and oral evidence from Mr McGuire. That application was opposed by the Applicants and was refused by the tribunal on the basis that it was too late for the Respondents to introduce new evidence. If this was allowed then it would inevitably delay the case, as the Applicants would have to be given time to consider this new evidence and might want an adjournment to consult with their heating engineers.

Mr Meijlink

82. Mr Meijlink is the leaseholder of Flat 6 at the Building, which is immediately above Flat 3. He was appointed as a director of both Respondent companies on 18 November 2013 and has been elected as the chairman of the board for the First Respondent. The board meet

once a month and Mr Meijlink now has sole responsibility for dealing with the heating problems in Flat 3.

83. In his witness statement, dated 28 January 2014, Mr Meijlink explains that he and one other (Mr Peter Gunton) had been appointed as directors of the First Respondent, in response to the tribunal application. He also sets out various "*conclusions*", which are really allegations of wrongdoing on the part Dr Arshad.
84. Both in his witness statement and in his oral evidence, Mr Meijlink expressed his opinion as to the cause of the problems with the heating in Flat 3. However this was of little value, given that he is not a heating engineer.
85. Mr Meijlink suggests that the tribunal proceedings are an abuse of process, stating "*..the Tribunal system is being misused for the purpose of holding the Freehold Company (MHFL), the Management Company (WSL) and its directors and ultimately all the leaseholder service charges fund to ransom for personal financial gain. A great deal of time and expense has been incurred dealing with the issues raised, and more than £18,000 in legal fees has been incurred within these proceedings*".
86. In oral evidence, Mr Meijlink explained that he has an original cast iron radiator in the front room to his flat. There is vertical feeder pipe leading to the radiator and a further pipe leading down from the radiator, through the floor boards, which then feeds the radiators in the sitting/dining room in Flat 3. The temperature of the water leaving the radiator in Flat 6 should be the same, or very similar, to the temperature of the water entering the radiators in the sitting/dining room of Flat 3.
87. Mr Meijlink has tested the temperature on the vertical pipe in his sitting room on several occasions, having purchased a thermometer for this purpose. The thermometer is attached to the surface of the pipe with adhesive and the normal temperature of the pipe is 45-47C. Mr Meijlink last measured the heat on Sunday 16 February, when the thermometer read approximately 45C. He believes that the actual temperature of the pipe was more than this, as it was very hot to touch. The thermometer only has one contact point with the pipe.
88. Mr Meijlink also explained that new agents, Tideway Investment Management Limited ("Tideway"), took over the management of the Building in January 2014. He has discussed the heating problem in Flat 3 with Tideway. They believe that there are improvements that could be made to the heating system and one option would be to change the current boiler arrangement. Subject to the outcome of the tribunal application, the board will be asking Tideway to take action to resolve any ongoing deficiencies. Mr McGuire has recommended that all of the

pipes in the communal heating system are tested and the board intend to follow this recommendation.

Mr Montgomery

89. Mr Montgomery is the leaseholder of Flat 7, on the first floor of the Building. Part of his flat is above Flat 3. Mr Montgomery has cast iron radiators throughout his flat and has not experienced any heating problems.
90. Mr Montgomery's witness statement, dated 28 January 2014, covered various matters including his relationship with Dr Arshad. He explained that he and Dr Arshad were the original directors of the Respondent companies and alleged that Dr Arshad was removed from these posts in December 2011.
91. Mr Montgomery also questioned Dr Arshad's motives for pursuing the tribunal application. He expressed the belief that Dr Arshad had sought to construct a case with the objective of removing him (Mr Montgomery) as a director of the Respondent companies, "*..under the pretext of negligence, misconduct and harassment*". The directors are concerned that Dr Arshad is seeking the appointment of a Manager to obtain additional rights over the control of the Building.
92. Mr Montgomery, like Mr Meijlink, expressed his opinion as to the cause of the heating problems in Flat 3. Again this evidence was of little value. Mr Montgomery also provided details of various alleged breaches of lease by Dr Arshad, including leaks from the pipework in Flat 3. He also referred to a report from Earl Kendrick Associates dated May 2012, which attributes the leaks to flushing waste water plumbing in Dr Arshad's bath, shower and kitchen. A copy of the report was exhibited to Mr Montgomery's statement.
93. In his oral evidence, Mr Montgomery referred the tribunal to "*House Rules*" that Farrar had circulated to all leaseholders in August 2012. Copies of these Rules were in the bundle. They include certain requirements for works to the radiators and adjoining pipework and stipulate that details of the proposed works must be submitted to the Landlords' Surveyors or Engineers for approval. The works, once completed, must then be inspected and approved by the Surveyors or Engineers.
94. The Rules were circulated after Mrs Banks replaced the radiators in Flat 8 in 2011. Further they post-date the replacement of most of the radiators in Flat 3.

Mrs Ellis

95. Mrs Ellis is the leaseholder of Flat 1, which is immediately below Flat 3. Her statement, dated 28 January 2011, dealt with many of the matters raised by Mr Meijlink and Mr Montgomery. She also expressed her opinion as to the cause of the heating problems in Flat 3, which was of little evidential value.
96. In her statement, Mrs Ellis also provided details of various leaks in her flat, which she attributes to defective pipework in Flat 3. She does not believe that Dr Arshad has undertaken any remedial work, as a further leak occurred in September 2013, long after the report from Earl Kendrick Associates was produced.
97. In her oral evidence, Mrs Ellis stated that she had checked the temperature of the vertical downpipe in Flat 6 (Mr Meijlink's flat) on three recent occasions. At 11am on 11 February 2014 she had felt the pipe, which was hot to touch. At 5pm on 18 February the pipe was also hot to touch and the thermometer read 55C. At 1pm on 16 March 2014 the pipe was, again, hot to touch but was possibly slightly cooler than on previous occasions.

Summary of Respondents' case and submissions

98. The Respondents' primary case is that there has been no breach of any obligation owed by them under the leases that relates to the management of the Building. The tribunal can only make an order appointing a manager if such a breach is made out and it is just and convenient to do so.
99. Mr Wynne-Griffiths referred the tribunal to various provisions in the Applicants' leases. He pointed out that their repairing obligations extend to the pipes and radiators within flats (clause 2 (a) of fifth schedule). The wording of the yielding up clauses obliges the Applicants to obtain the First Respondent's consent before substituting any of the fixtures and fittings in the flats, including the radiators (clause 6 of fifth schedule).
100. In relation to the Respondents' obligations, these are all subject to the proviso at clause 2 (a) of part II of the seventh schedule to the leases. It follows that the Respondents are only liable for any breach of obligation that has been caused by or contributed to by its negligence (or its servants or agents acting in the course of their employment).
101. The Respondents' liability for the communal heating system is limited to "*..equipment or apparatus used for providing services at all of the said flats or which are used in connection with the provision of services for the purposes for the benefit of the tenants and occupiers of all the said flats..*", in accordance with definition of the Reserved Property in the Part III of the seventh schedule.

102. Mr Wynne-Griffiths argued that the Applicants are liable to maintain all of the pipework in their flats, including the vertical pipes supplying hot water as part of the communal heating system. If the tribunal were unwilling to accept this argument then they needed to determine the following issues:
- (a) Has any sludge in the communal heating system been caused by a breach of the Respondents' obligations?
 - (b) If so, was this due to the negligence of the Respondents, their servants or agents?
 - (c) Have the Respondents failed to provide hot water to the radiators in the flats?
 - (d) If so, was this due to the negligence of the Respondents, their servants or agents?
103. Mr Wynne-Griffiths pointed out that the section 22 Notice served by the First Applicant concentrated on the sludge issue and did not refer to lukewarm water being supplied to his radiators. As far as the Respondents were aware, the application to appoint a Manager was founded upon the sludge problem.
104. The Respondents contend that they acted promptly and reasonably when the sludge issue was first reported in 2009. They appointed professionals to investigate the problem. Reef carried out a four stage flush and chemical cleaning of the heating system in October 2010 and there has been regular cleaning and testing of the water since that time. The various test results demonstrate that there was no significant debris in the system. Upon this basis the Respondent say that the sludge problem has been resolved and there was no negligence on their part.
105. Mr Wynne-Griffiths reminded the tribunal that the lack of heat in Flat 8 was remedied as soon as Mrs Banks replaced her radiators. The only current problem is with the 2 radiators in the sitting/dining room of Flat 3. There are no problems with the heating in the other 12 flats.
106. In relation to the water temperature, Mr Wynne-Griffiths explained that Dr Arshad relying on one set of readings taken by Mr McGuire on 30 December 2013. At the time of the readings the temperature of the feeder pipes in Flat 3 was in the region of 37C, which is approximately 30C lower than the temperature setting on the communal boiler. This could have been caused by numerous factors but the design of the one-pipe system means that the water temperature drops between leaving the boiler and reaching Dr Arshad's radiators, which are at the end of the system. The central heating system was installed in the late 1940s

and the age of the system inevitably means that there will be fluctuations in water temperature. Further the fact that the water temperature was 37C on one day does not automatically mean that the Respondents are in breach of their obligation to supply hot water.

107. Mr Wynne-Griffiths pointed out that Dr Arshad first reported the lukewarm water to Farrar and Co in March 2013. The Respondents immediately instructed PBSL who advised that the radiators would not function properly due to the manner in which the pipework had been installed. The Respondents had acted promptly and reasonably when the problem was reported, so there was no negligence on their part. Further they were not in breach of the covenant to supply hot water in that the problem was caused by poor plumbing and constrictions in the water flow, which are attributable to Dr Arshad's contractors.
108. In relation to the covenant for quiet enjoyment, Mr Wynne-Griffiths argued that this relates to the possession of the Applicants' flats and has nothing to do with the management of the Building. Upon this basis he contended that the tribunal would not have jurisdiction to appoint a Manager if there had been any breach of this covenant, which is denied.
109. Mr Wynne-Griffiths also addressed the tribunal on whether it would be just and convenient to appoint a Manager if, contrary to his submissions, a breach of covenant was made out. He pointed out that the Applicants only represent two out of the 13 flats in the Building. Neither of them had any particular issue with Tideway, who have only recently taken over the management of the Building. Tideway were specifically appointed with a view to resolving the heating problem and should be given an opportunity to do so.
110. Mr Wynne-Griffiths suggested that there was some illogicality in the Applicants seeking to impose a new managing agent. Mr McGuire has recommended complex investigations of the heating systems, which Tideway will be arranging. It would not make sense to "*parachute in*" a new agent, as this would only delay in the investigations. Further the proposed Manager, Mr Kohn, had not demonstrated any specialist knowledge of heating systems and had no previous experience of Manager appointments.
111. Mr Wynne-Griffiths also referred to the new composition of the Respondents' board of directors and the appointment of Mr Meijlink to take charge of the heating issue. In summary he contended that it would not be just and convenient for the tribunal to appoint a Manager, given the steps that the Respondents had already taken to resolve the heating issue and given that Applicants represent a small minority of the leaseholders at the Building.

The tribunal's decision

112. The tribunal refuses the application for the appointment of a Manager.

Reasons for the tribunal's decision

113. The tribunal reached the following conclusions on responsibility for the communal heating system, based upon the wording of the leases:
- (a) The Respondents are liable for the maintenance and repair of the all plant and equipment in the boiler room, the pipes in the common-ways and the provision of the communal heating system as a whole;
 - (b) The Applicants are responsible for the maintenance and repair of the supply and return pipes, leading to and from the radiators in their respective flats;
 - (c) The Applicants are NOT responsible for the maintenance and repair of any of the communal supply pipes in their flats, including the vertical pipes referred to in evidence. These do not form part of Applicants' demised premises in that they "*..are not used or intended to be used solely for the purposes of the demised premises*"; and
 - (d) The vertical supply pipes therefore form part of the "*Reserved Property*" and fall within the Respondents' repairing obligations at clauses 1 and 2 of part III of the seventh schedule to the leases.
114. The tribunal does not accept Mr Wynne-Griffiths submission that a Manager can only be appointed if there is negligence on the part of the Respondents, their servants or agents. It may be that clause 2 (a) of part II of the seventh schedule to the lease prevents the Applicants from recovering damages for breach of covenant, unless they can establish negligence. However it does not prevent them from seeking the appointment of a Manager based on such a breach.
115. The tribunal accepts that the covenant for quiet enjoyment in the leases does not relate to the management of the Building. It follows that the tribunal was only concerned with the alleged breaches of the repairing obligations and the covenant to supply hot water to the radiators.
116. The tribunal concluded that the Respondents were in breach of their repairing obligations in allowing sludge to accumulate in the communal system up until early 2012, as evidenced by the various reports. That breach has since been remedied in the water in the system now flows

smoothly, albeit it is discoloured. This is probably due to the treatment and testing of the water by Reef, since late 2010.

117. The tribunal also concluded that the Respondents had breached the covenant to supply hot water to the radiators in Flat 3 on at least two occasions. At the time of Mr McGuire's inspection on 30 December 2013 the temperature of the water entering the radiators was approximately 37C. The tribunal accept that the water temperature will reduce as it flows through the system and that there will be fluctuations in the temperature. However a temperature of 37C is unacceptable, given that the boiler thermostat was set at 70C. Further when Mr Harris tested the radiators on 18 January 2014, the bypass hose pipe did not heat up. He did not measure the water temperature with a thermometer but the tribunal found Mr Harris to be a reliable and credible witness and concluded that the water temperature was also inadequate on that date.
118. The tribunal does not accept that the manner in which the radiators and pipes have been installed in Flat 3 have caused the low water temperature. Dr Arshad consulted with Farrar and Co before changing one of his radiators in July 2009 and was informed that he did not need the Respondent's permission. The House Rules, introducing various requirements for changing radiators and pipes, were not introduced until three years later, in August 2012. Further the evidence from Mr Harris was that radiator installation was satisfactory and the fittings and radiators used would pass the required amount of water through the system to heat the radiators. Mr McGuire made some criticisms of the radiator installation in the dining/sitting room but concluded that the radiator in the dining area could remain with some minor modifications. Further his primary reason for recommending the replacement of the living area radiator was that it was made of aluminium and that this combined with the copper pipes meant an increased risk of corrosion.
119. Having found that there were breaches of the leases that relate to the management of the Building, the tribunal then went onto consider whether it was just and convenient to appoint a Manager. It concluded that this would be neither just nor convenient, for the following reasons:
 - (a) The sludge problem appears to have been largely resolved;
 - (b) New managing agents, Tideway, have been appointed and they should be given an opportunity to investigate and rectify the ongoing problems, which might involve substantial changes to the system;
 - (c) The Respondents have appointed two additional directors in response to the Applicants' criticisms, one of whom (Mr

Meijlink) now has sole responsibility for addressing the heating issue; and

- (d) The application does not appear to have the support of the other leaseholders at the Building. Indeed Mr Delaney asked to be removed as an Applicant, after Tideway and the new directors were appointed.

Application under s.20C and refund of fees

120. In the application form and at the hearing, the Applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determination above, the tribunal determines that it is not just and equitable to make such an order. The application has failed and it would be unjust if the other leaseholders in the Building have to contribute to the Respondents' costs, via their service charges, but the Applicants do not.
121. The Applicants informed the tribunal that they did not wish to make an application for a refund of the fees that they had paid in respect of the application and hearing¹.
122. Finally the tribunal wish to make it clear that it has considerable sympathy for the Applicants, particularly Dr Arshad. There has been a problem with the heating in his flat for almost 5 years, which is far too long. Clearly there has been a breakdown in Dr Arshad's relationship with the directors and it appears that not all of his complaints were taken seriously. Dr Arshad made the application to the tribunal, as he had been unable to resolve the matter through correspondence. Although the application has failed, the tribunal might have reached a different conclusion had the Respondents not taken steps to remedy the position by appointing new directors and managing agents since the application was issued. The tribunal encourages the parties to try and resolve their differences with a view to restoring good relations at the Building.

Name: Jeremy Donegan

Date: 15 May 2014

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the Upper 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) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Landlord and Tenant Act 1987 (as amended)

Section 24

- (1) The appropriate 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) The appropriate tribunal may only make an order under this section in the following circumstances –

- (a) Where the tribunal is satisfied –
- (i) That any relevant person is either 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;