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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/36UG/LAM/2015/0005**
Property	:	**Kirbys Flats, East Terrace, Whitby YO21 3HB**
Applicant	:	**Rhona Harrington & Brigette Thomasson**
Respondent	:	**Kirbys Whitby Ltd**
Type of Application	:	**Appointment of manager**
Tribunal Members	:	**Ms S O Greenan, barrister** **Ms J A Jacobs, MRICS** **Mrs A R Paterson**
Date of Decision	:	**18 November 2015**

DECISION

Decision

1. A manager is appointed pursuant to section 24 of the Landlord and Tenant Act 1987.

2. An order under section 20C of the Landlord and Tenant Act 1985 is unnecessary, the representatives of the Respondent having indicated that no costs have been incurred as a result of these proceedings.

3. The detailed management order is at the conclusion of this decision.

Background

4. Kirbys Flats is a large terraced property containing residential apartments situated in an elevated position on East Terrace to the west of the harbour in Whitby, North Yorkshire. The property faces east and has fine views of Whitby harbour, the Abbey and church. It is understood that the property was built as separate town houses in about 1855; later converted into a single building which was used as a hotel; was then empty for a period; and in about 1979, converted again into twenty flats of varying sizes. Of those flats, four are situated in the basement, and sixteen are in the remainder of the property and sixteen are in the remainder of the property, four on each of the ground, first, second and third floors. The basement flats are somewhat smaller than the others.

5. Kirbys has been a Grade II listed building since 1965. The listing describes it as follows:
"Similar to the Royal Hotel. Rendered. Slate mansard roof. Mid C19. 3 storeys and attics. Range of 17 windows, 11:6. Heavy moulded cornice below attic windows, which have double-hung sashes with glazing bars. 1st floor windows have double-hung sashes with glazing bars, with a continuous iron balcony of full-length standards and palmettes, 3 doors. Nos 5 and 6 have 6 panel door with cornice on consoles. 3 steps."

6. The freehold of the building is held by Kirby's (Whitby) Limited ("KWL"). Each leaseholder acquires a share in the limited company at the same time as an apartment is purchased, and the share is sold on with the flat.

7. The flats are leased on standard terms which include payment of a service charge. In relation to each flat, other than those in the basement, the lease reserves an annual rent of £10 together with "further or additional rent from time to time a sum or sums of money equal to one-eighteenth of the amount which the Landlord may expend in respect of the matters mentioned in the Fourth Schedule hereto and carrying out its obligations there under..." By clause 5(d) of the lease the lessor covenants to "maintain repair redecorate and renew (a) the main structure and in particular the roof chimney stacks gutters and rainwater pipes of the property (b) the gas and water pipes drains and electric cables and wires in under or upon the property and enjoyed or used by the Lessee in common with the owners and lessees of the other flats (c) the main entrances passages landing and staircases of the property so enjoyed or used by the Lessee in common as aforesaid and (d) the boundary

walls and fences of the property." The Fourth Schedule to the lease refers to the expenses incurred in discharging the covenant set out in clause 5(d).

8. Further by clause 5(e) of the lease the lessor also covenants to "so far as practicable to keep clean and reasonably lighted the passages landing staircase and other parts of the property so enjoyed or used by the Lessee in common" and by clause 5(f) to "so often as reasonably required decorate the exterior of the building in such manner as shall be agreed by a majority of the owners or lessees... or failing agreement in the manner in which the same was previously decorated ... and in particular will paint the exterior of the building usually painted with two coats at least of good paint at least once every three years."

9. The Tribunal did not see a copy of the standard lease for the basement flats, but understands that it is in identical terms save that the contribution to the service charge is one-thirty-sixth of the Landlord's expenditure.

10. This is not the first time that the assistance of the Tribunal has been sought in relation to this building. In 2012 KWL applied for a dispensation from the section 20 consultation process in relation to roofing works which had been carried out. The Tribunal acceded to the application (decision MAN/36UG/LDC/2011/0015). Two members of the current Tribunal were members of the Tribunal which made that earlier decision on 4 May 2012.

11. The application made by KWL in 2012 noted that the building "was in a state of some disrepair" and that the need for roofing works was "constantly discussed" at AGMs and at meetings of the committee of leaseholders engaged in trying to manage the building ("the Management Committee").

12. The decision made by the Tribunal in 2012 was not subject to any appeal or other form of challenge and the Tribunal dealing with the current application has treated its findings as part of the evidence available to it.

The current application

13. The current application was made by Rhona Harrington (acting through her son, Ralph Harrington, who holds a Power of Attorney on her behalf, granted on 11 February 2012) and Brigette Thomasson. They are both leaseholders: Mrs Harrington is the leaseholder of Flat 4 and Ms Thomasson of Flat 6.

14. The application was received by the Tribunal at the end of January 2015 and was for the appointment of a manager and an order under section 20C of the Landlord and Tenant Act 1985. The application referred to there being some urgency because of the state of the roof and the need, in the view of the applicants, for the building to have "professional management".

15. The application named Andrew Carmichael (leaseholder of Flat 9) as a Respondent. He is the Secretary of the Management Committee.

16. Directions were given on 18 February 2015. Both parties were ordered to file a statement of case.

17. On 13 March 2015 Michael Neville (leaseholder of Flat 12) gave notice to the Tribunal that he wished to be treated as a Respondent. Mr Neville was appointed as chair of the Management Committee on 7 February 2015.

18. The Applicants served their Statement of Case in March 2015. The Respondents filed their Statement of Case in April 2015.

19. The Tribunal was supplied by the parties with a substantial amount of documentation of varying degrees of relevance. This material included copies of minutes of Management Committee meetings and AGMs of KWL going back to 2007; assorted emails and correspondence between members of the Management Committee and leaseholders; a building condition report prepared on 14 August 2013 for KWL; quotations/estimates for proposed works to the building; invoices for past work.

20. A notice pursuant to section 22 of the 1987 Act was served by the Applicants prior to the making of the application.

The law

21. Section 24 of the Landlord and Tenant Act 1987 provides as follows:

(1) A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—

(a)such functions in connection with the management of the premises, or

(b)such functions of a receiver,

or both, as the tribunal thinks fit.

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

(a)where the tribunal is satisfied—

(i)that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii).....

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

(ab)where the tribunal is satisfied—

(i)that unreasonable service charges have been made, or are proposed 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 tribunal 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; or

(b)where the tribunal 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).

(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 tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal 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 tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.

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

(a)that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

(b)that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

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

22. Section 22 of the Act provides:

(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.

23. Section 20C of the Landlord and Tenant Act 1985 provides:

> (1)A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the 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.
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> (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.

The inspection

24. The Tribunal inspected Kirbys Flats on 27 July 2015. It was dry at the time of the inspection, but this followed several hours of heavy rain. Representatives of the Applicants and the Respondents were present during the inspection.

25. Kirbys Flats is a substantial building and a detailed description of all that was seen would be extensive. The following observations are most pertinent to the matters in issue:

    a. The roof of the building was in a substantial state of disrepair, with water penetrating through the roof into flats situated below it. The Tribunal in particular inspected Flat 10 on the second floor: water was penetrating through the ceilings in the kitchen and living room, and being caught in buckets and other receptacles. There had been extensive collapse of the ceilings as a result.

    b. The exterior of the building was generally in poor visual condition, with peeling paintwork to the windows and the ironwork corroding, with sections missing, requiring renovation and re-painting. Many of the window frames were in poor condition, with areas of rotten wood;

    c. The common areas of the building had poorly maintained decorations and were dirty and dingy;

    d. Communal storage areas in the basement were cluttered with belongings apparently placed there by various leaseholders, although these areas were not designated for general storage. The communal landings were also cluttered with personal effects.

The hearing on 27 July 2015

26. This matter was originally listed for hearing on 27 July 2015. A hearing took place on that date at Scarborough Justice Centre. Present at the hearing were the Applicants Mr Harrington and Ms Thomasson; the Respondents Mr Neville and Mr Carmichael; and other leaseholders Pat Ingham, Mrs Bracegirdle, and Mr and Mrs Smith.

27. During the course of that hearing the Respondents accepted that KWL was in breach of its obligation to keep the roof and exterior of Kirbys Flats in repair and that the condition set out in section 2(2)(a) of the 1987 Act was met.

28. At the hearing the Applicants were proposing the appointment of Mr Andrew Wiles of Watsons Property Management as the manager pursuant to section 24. Mr Wiles had been expected to attend the hearing but was unable to do so due to a family bereavement.

29. In the circumstances it was the view of the Tribunal that the appointment of a manager could not proceed.

30. The Tribunal indicated to those present at the hearing that it had formed the view that the condition set out in section 24(2)(a) of the Act was satisfied, this having been accepted by the Respondents, and that its finding was that it would be just and convenient to appoint a manager. It would not however proceed to appointment in the absence of the proposed manager.

31. The hearing was therefore adjourned to permit the Applicants to arrange for the proposed manager to attend.

32. The Respondents indicated during the hearing that KWL had been considering the appointment of external agents and with that in mind had interviewed both Mr Wiles of Watsons Property Management and a representative of Town and City Property Management.

Subsequent events

33. The Tribunal sent out directions to the parties following the hearing on 27 July 2015. In those directions, the Tribunal drew the attention of the parties to a decision of a previous Tribunal in which Town and City Management had played a role.

34. Both the Applicants and the Respondents sent further written submissions to the Tribunal regarding the appointment of and identity of a manager.

The hearing on 18 November 2015

35. A further hearing took place on 18 November 2015 at Scarborough Justice Centre. Mr Harrington and Ms Thomasson attended for the Applicants. Mr Neville and Mr Carmichael attended for the Respondents. Mrs Ingham was also present.

36. The Applicants, in their final written submissions, proposed the appointment as a manager Rosalie Abel of Abel Property Service, a firm of which Mrs Abel is the sole proprietor. Mrs Abel was in attendance and had provided a witness statement. She gave evidence and answered questions put to her by the parties and the Tribunal.

37. The Respondents indicated that they did not actively oppose the appointment of Mrs Abel.

38. The Tribunal concluded that she was a proper person to be appointed as a manager and appointed her on the terms set out below for a period of five years.

Findings

39. Kirbys Flats is a mid-nineteenth century building converted to its current purpose around thirty-five years ago. Its age and its exposed location on the West Cliff in Whitby result in a need for ongoing maintenance of the fabric and structure of the building.

40. There is some anecdotal evidence that the developers who turned the building into flats intended to renew the roof as part of the conversion, but did not go ahead with this because of financial issues.

41. The freehold of the building is owned by KWL which is a company controlled by the leaseholders. It is run by a Management Committee elected by the leaseholders. The company's memorandum and articles of association make provision for a Council of Management: it appears that the Management Committee fulfils this role. The company has directors appointed by the leaseholders: their identity has varied from time to time. Publicly available records show that the current directors of the company are Mrs Peart and Mrs Ingham, both leaseholders. The memorandum and articles of association provide by clause 36 that:

"The business of the Association shall be managed by the Council who may pay all such expenses of... and may exercise all such powers of the Association, and do on behalf of the Association all such acts as may be exercised and done by the Association..."

Thus the company's responsibilities and obligations are delegated to the Management Committee.

42. At no time since the conversion of the building to flats has KWL had the benefit of professional assistance with managing the building. The management has been carried out by leaseholders prepared to give their time and energy to running the building.

43. In recent years there has been disagreement between the leaseholders as how the building should be run. This disagreement has centred around disputes about the extent of the expenditure which the leaseholders can be expected to incur. KWL has not operated a sinking fund and the company's ability to fund repairs has been compromised by the perception that some leaseholders would simply refuse to pay for works, possibly leading to complicated enforcement proceedings for which KWL, having no professional assistance, had little appetite.

44. This difficult situation has been made worse by personality clashes between the leaseholders. These clashes were evidenced throughout the hearings before the Tribunal.

45. A further example of the tortuous nature of the disputes is the change in the roles of the parties between the 2012 proceeding and the 2015 proceedings. In 2012 Ms Thomasson, an applicant in the current proceedings, was the Secretary of KWL and acted as one of the applicants for the section 20 dispensation. Mr Neville had joined with Mr Harrington in opposing that application. By 2015 Mr Neville was the Chair of KWL, and Ms Thomasson was the joint applicant for the appointment of a manager with Mr Harrington.

46. Concerns about the state of repair of the building, and in particular the roof, have been drawn to the attention of KWL for many years. On 1 February 2006 a group of flat owners wrote to the then Chair of KWL, Mr Deakin, highlighting "the dilapidated state of the building, whose decline has been accelerating in recent years".

47. On 20 September 2007 a firm of loss adjusters dealing with an insurance claim arising out of the condition of the roof wrote to Mr A Deakin of Flat 15, then the Secretary of KWL, indicating that there were various problems with the external roof structure resulting from natural long term deterioration together with some possible design defects. They noted that these were longstanding issues as evidence of the application of bitumen to the slate facings and flashing was visible.

48. In June 2007 KWL obtained a quotation from Tiger Roofing for replacement of the roof, then costed at £62,098. Mr Atkinson of Tiger Roofing indicated in a written report that the roof needed replacing rather than further patching.

49. In August 2007 the roof was inspected by a local firm, BHD Partnership ("BHD"). They recommended either complete renewal of the roof, or an extensive overhaul.

50. In 2009 there were leaks into Flats 17, 14 and 10. Despite this KWL decided not to replace the roof and to proceed with further temporary repairs.

51. In 2011 there were leaks into Flat 12 (Mr Neville's flat).

52. In March 2011 a builder, Mr Roach, sent an email to Mr Deakin in which he referred to the "atrocious state of the main roof". This had been reported to Mrs Ingham, then Treasurer, on a number of occasions. Mr Roach carried out certain works: these were initially funded by the Chair, Mr Deakin, lending money to KWL.

53. In 2011 patch repairs to the roof were carried out by a local contractor, Mr Lawson. This involved applying sealant to the areas of the roof which were permitting water ingress. In early 2012 Mr Lawson indicated that he would "in an ideal world" recommend the replacement of the roof.

54. On 9 April 2012 the Management Committee held a meeting at which they concluded that the roof might have another three to five years life in it but that a sinking fund should be started to save for the roof. It was agreed that

"maintenance fees" for the basement flats should be increased to £560 and for the other flats to £700.

55. The need to set up a sinking fund was discussed again at the Committee meeting on 23 June 2012. The Committee discussed, but rejected, employing an external agent to assist in managing the building, but adopted a suggestion that KWL should apply for associate membership of ARMA. Such an application was not made.

56. At an AGM held in 2012 it was apparently decided that the basement flats should contribute £80 per annum to the sinking fund, and the other flats £100. There was some subsequent confusion about how much it had been agreed should be paid into the sinking fund: this appeared in part to arise from resistance on the part of certain leaseholders to making any such payments.

57. In 2013 the service charges paid by the basement flats were £560 per annum and for the upper floor flats £700. In 2012 the figures were £480 and £600.

58. On 7 May 2013 the building's insurers carried out an inspection and pointed out to KWL the cluttered state of the common areas of the building, which posed an unacceptable fire risk. They required them to be cleared within 30 days.

59. In August 2013 a Building Condition Report was carried out by surveyors from BHD, who were commissioned by the owners of some of the flats on the upper three floors of the building (6, 9, 10, 12 and 15). BHD on this occasion recommended complete replacement of the roof together with associated works on the parapets, gutters and stone copings. That report was supplied to KWL and discussed at a Management Committee meeting on 26 October 2013.

60. In 2013 water ingress was being experienced in Flats 17, 16, 10, 9 and 6. At the AGM in 2013 no decision was taken in relation to the works needed on the roof. A suggestion that a cleaner should be employed to clean the common parts was not taken up.

61. In January 2014 the Management Committee agreed to have further patch repairing to the roof carried out by Mr Lawson.

62. In March 2014 the Secretary of the Management Committee wrote to the flat owners indicating that, because of a failure to send out the written summary of rights and responsibilities with the service charge demand, the flat owners were entitled to withhold payment until this omission was corrected.

63. In May 2014 it was suggested at the AGM that each leaseholder should pay £1,000 per annum into a roof fund (£800 for the basement flats) for five years until the roof was replaced.

64. By September 2014 the Management Committee had obtained quotations for replacement of the roof from three roofing contractors but had not awarded

the contract to any of them. The lowest quotation was over £60,000 and the highest over £100,000.

65. By October 2014 a Reserve Account had been set up to act as sinking fund, but contained only £2,680. It took the Management Committee two years simply to bring the account into existence. There has been an ongoing dispute about how much the flat owners should be paying into this account.

66. Further roof leaks occurred during the summer of 2014. However when the Management Committee met on 11 October 2014, there was no timescale set for the carrying out of any substantive roof works.

67. In January 2015 a survey of the roof and schedule of works with drawings was carried out for KWL by Alan Wood and Partners Ltd at a cost of £4,980. Despite this work having been carried out, by the time of the Tribunal hearing in July 2015, no roofing contractor had been selected to carry out the works.

68. The Tribunal found that KWL had been aware from no later than 2007 that the roof of Kirbys Flats required imminent replacement. KWL had been aware from no later than early autumn 2013 following receipt of the second BHD report that the roof needed replacing as a matter or urgency.

69. Despite this KWL had not put in place a contractor to carry out the work on the roof, had not set a timescale for the works, and had not put in place funding arrangements which would permit the works to be paid for.

70. It was the view of the Tribunal that KWL had failed to discharge its duty to manage the building and had failed to discharge its duty pursuant to clause 5(d) of the lease to maintain and repair the structure of the building. In particular, it had:

    a. Failed to maintain and repair the roof, parapets and copings
    b. Failed to maintain and repair the ironwork to the exterior of the building;
    c. Failed to keep the common parts clean and clear;
    d. Failed to redecorate the exterior of the building. It appeared that no redecoration had been carried out to the exterior (save for some carried out by individual leaseholders) at any time within the recollection of any person involved in the proceedings, and possibly not since the conversion of the building in 1970.

71. The Tribunal therefore found that the requirement set out in section 24(2)(a)(i) of the Landlord and Tenant Act 1987 was met.

72. In addition the Tribunal found that KWL had consistently charged service charges which were not calculated in accordance with the lease. The four basement flats should, pursuant to the lease, pay 50% of the service charge paid by the other flats. The documentation before the Tribunal indicated that they have paid for some years 80% of the full service charge.

73. The Respondents agreed that an agent should be appointed by the Management Committee. On 10 April 2015 the Secretary, Mr Carmichael, wrote to the Tribunal indicating that the Committee had agreed in principle to appoint an agent, but that "the terms of reference and the full implications for the effective management of Kirby's have indeed still to be addressed in depth by the Committee. Potential managing agents' schedule of charges have not been seen and the committee will need time to consider these on a cost benefit basis."

74. By the time the matter came before the Tribunal for the first hearing, the Committee had not identified an agent who it wished to appoint. It had interviewed two prospective section 24 appointees. It would have been open to the Committee to come to the Tribunal with a proposal to appoint an identified managing agent, and with an explanation as to how he would have the co-operation and support of the Committee and the leaseholders in managing the building to an acceptable standard and carrying out the necessary works. The Committee did not come to the Tribunal with such a proposal, or any clear proposal as to how the works could be managed, and the funds necessary to pay for them obtained.

75. The Tribunal has sympathy for those who have over the years tried to grapple with the problems involved in running this building. The difficulty which has arisen appears to be that the Management Committee has been unable to reconcile its responsibility (as the Council of Management) to discharge the duties of the freeholder with the wish of a substantial proportion of the leaseholders to operate the running of the building on a democratic basis. As a result the Management Committee has been unable to go ahead with necessary works to the roof because the majority of the leaseholders, whose flats are not (yet) directly affected by the state of the roof are reluctant to incur the substantial expenditure needed to replace the roof. Similarly the will of a majority of leaseholders to keep service charges to a minimum has been permitted to prevail, with the result that basic cleaning services are not provided to the common parts, and the exterior of the property has never been decorated.

76. Although the Management Committee had by the time of the first hearing identified potential contractors and obtained quotations, no decision had been made as to which contractor should be selected, and no proper method of putting in place the funding for the work had been arrived at. Leaseholders had been invited to consider making extra payments, but no proper service charge demands had been served which incorporated the costs of these now imminent works.

77. The Tribunal found that unless a manager was appointed there was a risk of further delay in carrying out the roofing works and little prospect of the other matters being attended to. It therefore found that it was just and expedient to appoint a manager under section 24 of the Act.

78. At the second hearing the Tribunal considered the appointment of Mrs Abel, which was proposed by the Applicants and not actively opposed by the Respondents.

79. The Tribunal considered that Mrs Abel was a suitable person to appoint as manager. She was locally based and could manage the building on a hands-on basis, which is likely to be important, particularly during the early years of her appointment. She had familiarised herself, as far as she could on the information made available to her, with the property and with the issues likely to arise in managing it. She indicated a willingness to charge no more than £150 per unit during the first year of her involvement. She was willing to work with the residents and to attend their AGM taking place at the end of November.

80. The Tribunal makes the following order:

1. Rosalie Abel of Abel Property Services, Whitby is appointed Manager of Kirbys Flats, East Parade, Whitby with effect from midnight on 1.12.15 for a period of five years.

2. From the date of appointment and throughout the appointment Mrs Abel must ensure that she has appropriate professional indemnity cover in the sum of at least £250,000 and shall provide a copy of the current cover note upon a request from the Tribunal.

3. During the period of appointment the Manager shall collect all various sums reserved and made payable by the Lessees ("the Lessees") under the twenty leases ("the Leases") of the flats ("the Flats") in the Property including but not limited to :

   - Service Charges;
   - Insurance Rent

   In addition the Manager shall be entitled to collect immediately her fee for December 2015.

4. During the period of her appointment the Manager shall carry out the obligations of Kirbys (Whitby) Ltd ("KWL") with regard to repair, maintenance, decoration, provision of services to the Property.

5. The Manager shall, if she deems it necessary for the proper discharge or her duties, borrow or raise money on such terms or security as she shall think fit.

6. The Manager shall forthwith proceed to establish accurately the balance (if any) held in the service charge account and KWL shall transfer, or direct that its agent shall transfer, any balance held in any bank account for the Property.

7. The Manager shall draw up a plan as to the action to be taken during the period of appointment including a planned maintenance programme and specify what action she intends to take with respect to any existing defects. This plan shall be put in writing and sent to every Lessee and KWL.

8. The Manager shall comply with all statutory requirements including those set out in the Landlord and Tenant Acts 1985 and 1987 as amended and with the requirements of the Service Charge Residential Management Code (Second Edition) published by the RICS and approved by the Secretary of State under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

9. The rights and liabilities of the Landlord arising under any contract of insurance for the property shall upon the date of implementation of this Order become rights and liabilities of the Manager. The Manager is to ensure that the Property is suitably insured at all times.

10. KWL shall give all reasonable assistance and co-operation to the Manager while acting in accordance with its duties under this Order. The Manager shall be entitled to such documents that should be in the possession of KWL as are reasonably required for the proper management of the Property and to establish the current state of the service charge account detailed above.

11. The Manager shall carry out the following services, including but not limited to:

- Provide a budget estimate of Service Charge each year to all Lessees.
- Invoice for service charge following determination of actual sums expended and provided for in annual accounts sent to every Lessee.
- Collect Interim Service Charge instalments as per the Lease.
- Serve demands for Service Charge and arrears of service charges when calculated and instruct firms to recover same.
- Open an account for all service charge monies to be held in Trust for the Lessees.
- Set up an account for service charges designated for major works to be held in Trust for the Lessees, in accordance with the Lease.
- Be available to all Lessees during office hours on reasonable notice.
- Provide an out of hours contact number.
- Maintain the property with due diligence.
- Manage and collect the necessary funding for the major structural works which are currently required to the roof and exterior of the building.
- Carry out an inspection of the property on a monthly basis.
- Carry out a Fire Risk and Health and Safety Assessment.
- Test the fire alarm monthly.
- Arrange refuse collection.

12. The Manager shall be entitled to apply to the Tribunal for further Directions in accordance with Section 24(4) of the Landlord and Tenant Act 1987 in particular in the event that there are insufficient sums held by him to discharge his obligations.

13. The Manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors.

14. The Manager shall be entitled to remuneration at a rate of £150 per unit per annum together with (after the first year) such additional charges as the Manager may reasonably be entitled to charge for work undertaken. The Manager is not VAT registered at present.

15. This appointment will last for five years from 1 December 2015.

16. The Manager shall produce a short written report for the Tribunal (copies of which shall be sent to the Lessees) on or before 1.7.16 and thereafter on each anniversary of her appointment indicating whether she regards it as likely that an application for further directions will be required during the following twelve months.

17. This appointment does not cover the collection of Ground Rent.

18. No order is made under section 20C of the Landlord and Tenant Act 1985, the Respondents having indicated that there are no relevant costs to be added to the Service Charge.

19. KWL is to reimburse the Application fee and Hearing fee to those Applicants who paid them.