



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

**Case reference** : **LON/00BA/LVM/2019/0002**

**Property** : **Kilmeny House, 36 Arterberry Road, London, SW20 8AQ**

**Applicant** : **David Broome (Manager)**

**Representative** : **N/A**

**Respondents** : **The Leaseholders**

**Representative** : **N/A**

**Type of application** : **Variation of order for appointment of manager**

**Tribunal member** : **Tribunal Judge I Mohabir**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **19 March 2019**

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**DECISION**

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## **Background**

1. The Applicant manager, Mr Broome, seeks a variation of the order dated 11 December 2018 (“the order”) appointing him as the manager of the subject property.
2. Mr Broome’s predecessor as manager was Mr Blooman who was appointed by the Tribunal pursuant to an order dated 17 July 2017.
3. It seems that during Mr Blooman’s tenure he appointed “Bamptons” to manage the property entirely on his behalf and entered into a management contract with that firm. The contract contains an express term that it may only be terminated by either party on the other giving 3 months’ notice in writing at any time. By reason of Mr Broome’s appointment, the services of Bamptons are no longer required and he wishes to or has terminated the contract.
4. The variations sought by the Applicant in this application are as follows. Firstly, a determination that any costs incurred in terminating the contract with Bamptons are not payable by the service charge account but by Mr Blooman personally. It is the Applicant’s case that there is no express term in the order that permitted Mr Blooman to delegate his entire management duties or functions to Bamptons and, therefore, any termination costs are not payable by the service charge account.
5. Secondly, to amend the order so that the rights and liabilities of the freeholder become those of the manager.
6. Thirdly, to include a term permitting the manager to delegate to other employees of his firm, HML PM Ltd.
7. Fourthly, to amend paragraph (iv) under the “Maintenance” heading in the Schedule of Functions and Services of the order extending the time

for reviewing the decision as to the replacement of the staircase and any possible tendering process that may follow.

8. Each of these points is dealt with below. In relation to the second to fourth proposed amendments, the Applicant has provided a draft order, which is found at pages 17-25 in the hearing bundle.
9. On 4 February 2019, the Tribunal issued Directions, which included a direction that any Respondent should notify the Applicant if they objected to the application. No such objection has been received and the application is, therefore not opposed.

### **Relevant Law**

10. The Tribunal's power to vary a management order arises under section 24(9) of the Landlord and Tenant Act 1987 ("the Act"). It is not necessary to set out this provision, as it self-evident.

### **Decision**

11. The Tribunal's determination took place on 19 March 2019 and was based solely on the Applicant's statement of case and other documentary evidence filed in support.
12. As to the Bampton contract, in its directions, the Tribunal raised the issue with the Applicant as to whether it had jurisdiction in this application to determine whether Mr Blooman or the service charge account should be liable for any termination costs.
13. The Applicant submitted that the Tribunal did have jurisdiction under section 24(4)(a) of the Act to make an order with respect to:  
*"(a) such matters relating to the exercise by the manager of his functions under the order"*.

14. Alternatively, it was submitted that the Tribunal had jurisdiction under section 27A of the landlord and Tenant Act (as amended) to determine to whom and by whom service charges are payable.
15. The Tribunal did not accept these submissions as being correct. It was satisfied that any costs incurred under the Bampton contract is not a matter relating to Mr Broome's functions as the manager or is incidental or ancillary thereto within the meaning of section 24(4)(a) of the Act.
16. The issue is whether Mr Blooman is entitled to seek an indemnity for any termination costs under the Bampton contract from the service charge account. As a matter of contract, Mr Blooman has primary liability for any termination costs incurred under the Bampton contract. If it is his case that he is entitled to an indemnity from the service charge contract, he will have to seek a determination on the point if the Applicant is not prepared to provide such an indemnity. As a matter of contract, Bampton cannot recover any termination costs from the Applicant. It is an entirely separate contractual issue and is not directly related to the performance of Mr Broome's management functions under the order within the meaning of section 24(4)(a) of the Act.
17. The Tribunal also did not consider that it could make a determination under section 27A of the 1985 Act because no such application was before it. This application is jurisdiction specific and the Tribunal cannot assume a service charge jurisdiction. As is stated above, it will be for Mr Blooman to establish that he can obtain an indemnity from the service charge account for any termination costs incurred under the Bampton contract.
18. As to the second to fourth proposed variations to the order, the Tribunal approves these for the reasons set out in the Applicant's

statement of case and on the basis that these are not opposed by the Respondents.

19. The Applicant is to file a “clean” copy of the amended order within 14 days of service of this decision.

### **Costs**

20. As the Tribunal considers that the application has properly been brought, it does not consider it just or equitable for an order being made under section 20C of the 1985 Act in relation to any costs incurred by the Applicant in bringing it.

**Name:** Tribunal Judge I Mohabir      **Date:** 19 March 2019

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

