



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

Case reference : **LON/00BK/LAM/2020/0003**
CVPREMOTE

Property : **70-72 Westbourne Terrace London W2
6QA**

Applicant : **Lorenzo de Santis**
As Attorney for
Calder Park SA

Representative : **Mr Brett Swabey of Swabey & Co,**
Solicitors

Respondent : **70-72 Westbourne Terrace Residents**
RTM Company Limited (1) And The
Chilworth Trust Limited (2)

Representative : **Ms Tricia Hemans of Counsel**

Type of application : **Appointment of Manager**

Tribunal member(s) : **Judge Professor Robert Abbey**
Sue Coughlin MCIEH; Professional
Member

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

Date of decision : **04 August 2020**

DECISION

Background and application

1. The applicant is the leasehold proprietor of Flat 6 in 70-72 Westbourne Terrace, London W2 6QA, (the property). This is a building comprising two converted terraced houses that has been divided into 18 flats. The first respondent is the Right To Manage (RTM) company which currently has management responsibilities in relation to the property following its acquisition of the right

to manage in 2004. The second respondent, which is not actively participating in these applications, is the freeholder.

2. The applicant has made two applications. First, the applicant has made an application to appoint a manager under s.24, Landlord and Tenant Act 1987 (the “1987 Act”) having first served a notice under s.22 of the 1987 Act on the respondents). The applicant has applied to appoint Paul Anthony Cleaver as a manager for the property in which its flat is situated. Mr Cleaver has confirmed that he is prepared to act as a manager if appointed by the Tribunal. Secondly, the applicant filed an application for an order under s.20C of the Landlord and Tenant Act 1985 on 10 July 2020 (the “s.20C application”).
3. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the Ministry of Justice Cloud Video Platform with all participants joining from outside the court. A face to face hearing was not held because it was not possible due to the Covid 19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions. The bundle was supplemented by some additional documents submitted in the week prior to the hearing.
4. Whilst it was apparent to the Tribunal from the papers before it that the parties all agreed that a Manager should be appointed it was also clear that there was some dispute as to the grounds for the appointment. The Grounds are covered in s.24 of the 1987 Act and are set out in an extract from the statute below. The application is made on the basis of s.24(2)(a) of the 1987 Act i.e. breaches of obligation, and s.24(2)(ab) of the 1987 Act i.e. unreasonable service charges . This was denied by the first respondent. However, Counsel for the first respondent made it clear that her client would consent to an order being made on the basis of s.24(2)(b) of the 1987 Act i.e. that other circumstances exist making the appointment of a manager appropriate and that it is just and convenient to do so.
5. The appointment of manager by a tribunal is covered in S 24 of the 1987 Act as follows:-

(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, 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;

(aba)where the tribunal is satisfied—

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

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

(ac)where the 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.

6. All parties agreed to the appointment of a manager and after further consideration the applicant accepted that the application could proceed on the basis of (b), namely where the Tribunal was satisfied that other circumstances existed to make it just and convenient for an order to be made.
7. The Tribunal was satisfied that there were other circumstances that made it just and convenient to make an order bearing in mind the breakdown in trust and co-operation between the parties that had led to the dispute being before the Tribunal for settlement. Furthermore, there were clearly unresolved and substantial issues with regard to repairs and maintenance and service charges that needed firm and proactive management that the appointment of a tribunal appointed manager could bring to the property.
8. The parties were also in agreement as to the identity of the proposed manager. Mr Cleaver was then asked questions by the Tribunal as to his suitability as a manager. He informed the Tribunal that he had set up his management

company over 20 years ago and has been appointed on 10 separate appointments as a Tribunal appointed manager. He holds appropriate professional qualifications and has indemnity insurance to the value of £5,000,000. This was in the name of his company but he was able to produce supporting evidence to show to the Tribunal that this cover specifically covers directors such as himself in the event of a claim arising from his personal appointment as a manager. The Tribunal was satisfied with the insurance cover and with his suitability as a Tribunal appointed manager.

9. With regard to the appointment of a manager the order will not also make an appointment as receiver. The decision in the Upper Tribunal in *PC Residents (Finchley Road) Ltd v Sekinat Abiola & others*, [2013] UKUT 0165 (LC), LRX/85/2011 gives guidance. Provision for the appointment of a manager by the tribunal is made in Part 2 of the Landlord and Tenant Act 1987. The power to make the order is set out in section 24(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. “

10. In *PC Residents*, by paragraph 1 of the Management Order, the LVT appointed Mr Bruce Maunder Taylor “as Manager and Receiver” of the property concerned, Palace Court in London NW3. The lessee-owned management company, PC Residents (Finchley Road) Ltd appealed to the Upper Tribunal. In her judgment of 8 April 2013, allowing the appeal, HHJ Alice Robinson held:

“[15] In my judgment the terms of s.24(1) of the 1987 Act are quite clear. The power of the LVT is to appoint a manager not a receiver, though the manager may be appointed to carry out the functions of a manager and/or receiver. The references to ‘receiver’ in s.21(6) and s.24(8) are to the appointment of a receiver under other powers...”.

11. This being so the order in this case will make reference to a manager who will have the powers of a receiver.

The appointment

12. Therefore, In accordance with section 24(1) of the 1987 Act Paul Anthony Cleaver of 196 New Kings Road Fulham London SW6 4NF (‘the Manager’) is appointed as manager of the property at 70-72 Westbourne Terrace London W2

6QA upon the terms more particularly set out within the management order attached hereto in the annex to this decision.

13. The order shall continue for a period of 4 years from 10 August 2020.
14. The Manager shall manage the Property in accordance with:
 - (a) The management order directions and schedule of functions and services attached to this decision;
 - (b) The respective obligations of the landlord and the leases by which the flats at the Property are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - (c) The duties of a manager set out in the Service Charge Residential Management Code ('the Code') or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993.
15. The Manager shall register the order against the landlord's registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.

The s.20C Application

16. The applicant has made a s20 application. S.20c says that a tenant may make an application for an order that all or any of the costs incurred by the landlord in connection with proceedings before the First-tier Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application. In residential leases it is common for the landlord to include as service charges their legal costs of managing the property. These costs can include the costs of court or tribunal action, whether this is started by them or the leaseholder. Under section 20C of the Landlord and Tenant Act 1985 Act, a tenant can therefore apply for an order that all or part of the landlord's costs arising from the tribunal proceedings are not to be included in the service charge.
17. In *Bretby Hall Management Company Limited v Christopher Pratt* [2017] UKUT 70 (LC) the principles to be applied when considering a s20c application were summarized as follows:-
 1. *The only principle upon which the discretion should be exercised is to have regard to what is just and equitable in the circumstances.*
 2. *The circumstances include the conduct of the parties, the circumstances of the parties and the outcome of the proceedings.*
 3. *Where there is no power to award costs there is no automatic expectation of an order under s 20C in favour of a successful tenant although a landlord who has behaved unreasonably cannot normally expect to recover his costs of defending such conduct.*

4. *The power to make an order under s 20C should only be used in order to ensure that the right to claim costs as part of the service charge is not used in circumstances which make its use unjust.*

5. *One of the circumstances that may be relevant is where the landlord is a resident-owned management company with no resources apart from the service charge income.*

18. The Tribunal therefore needed to have in mind what is just and equitable in the circumstances. In *Re Scmla (Freehold) Limited* [2014] UKUT 0058 Deputy Chamber President Martin Rodger QC stated that

“An order under section 20C interferes with the parties’ contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances...”

19. Accordingly, the Tribunal was indeed mindful of the consequences of any order it might make under s.20c as more particularly mentioned below with regard to the RTM Company, the first respondent.

20. As was clarified in *The Church Commissioners v Derdabi* LRX/29/2011 the Tribunal took a robust, broad-brush approach based upon the material before it. The Tribunal took into account all relevant factors and circumstances including the complexity of the matters in issue and all the evidence presented and timings.

21. In the light of the above the Tribunal decided that the principle that they had to be particularly mindful of was “where the landlord is a resident-owned management company with no resources apart from the service charge income”. The first respondent is a Right to Manage Company whose whole existence is to be a resident owned Management Company where the only source of funds is the service charge. (The Commonhold and Leasehold Reform Act 2002 provides the right for leaseholders in flats to transfer the management functions of the landlord to a company of their own, known as a Right to Manage Company.) This being so this specific principle must come into play and be paramount when considering the s20c application.

22. Therefore, no order shall be made under section 20C Landlord and Tenant Act 1985 so that the Respondent’s costs before the Tribunal shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable. (The Tribunal noted that the residential leases contained a definition of “total service cost” representing the service charges that encompassed the provision of services and other heads of expenditure including costs of administration professional and management fees. This would seem to the Tribunal to properly cover these costs). We deal with the s.20 application in this way because the first respondent is an RTM Company that only has income from the service charge. Even so we also noted that there were significant issues with regard to lift repairs and heating system problems that had been allowed to drag on for an excessive period of time to the detriment of the occupiers of

the property. These failures were factors that were considered and in other circumstances might have been paramount, but in the end the nature of the first respondent was the overriding factor that has led to this decision. The Tribunal notes that the First Respondent informed the tribunal that it had endeavoured to keep its costs in this matter to a minimum and that the fees it had incurred are limited to those of its barrister.

Name: Judge Professor Robert
Abbey

Date: 04 August 2020

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).

Annex

MANAGEMENT ORDER

In this order and the Schedule of Fees (at the end of this order)

- a) **1985 Act** means the Landlord and Tenant Act 1985 (as amended)
- b) **1987 Act** means the Landlord and Tenant Act 1987 (as amended)
- c) **Application** means the application of the Applicant dated 3rd February 2020 for an order under section 24 of the 1987 Act
- d) **Garage Lease** means the lease of the basement of the part of the Property dated 26 October 2006
- e) **Landlord** means the person in whom the interest in reversion to the Leases vests from time to time, which person is currently the Second Respondent
- f) **Leases** means the Residential Leases, the Garage Lease and any future leases granted during the duration of the order which have an initial terms of 21 years or more.
- g) **Lessees** means the registered proprietors of Leases
- h) **Manager** means Paul Anthony Cleaver of 196 New Kings Road, London, SW6 4NF
- i) **Management Functions** means the powers and functions conferred on the Manager for the management of the Property in accordance with this order
- j) **Major Works** means works to the Property that are “qualifying works” to which section 20 of the 1985 Act applies or such other Works which are required to be carried out to the Property where it is reasonable to prepare a specification of works, obtain competitive tenders and supervise the works in question
- k) **Order** means the order of the Tribunal dated 04 August 2020 made in connection with the Property under Part II of the 1987 Act
- l) **Property** means all that property known as 70-72 Westbourne Terrace London W2

- m) **QLTA** means a “qualifying long term agreement” to which section 20 of the 1985 Act applies
- n) **Residential Leases** means the leases of the 18 flats located at the Property, the interests under which are registered at HM Land Registry
- o) **Service Charge Expenditure** means costs incurred in providing services to which the Lessees by virtue of the provisions in their respective leases are required to contribute by way of service charges
- p) **Service Media** means all media for the supply or removal of heat, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media
- q) **Tribunal** means the First-tier Tribunal (Property Chamber)

UPON the Application

AND UPON the Respondent consenting to the appointment of the Manager in the terms of this order,

AND UPON the Tribunal being satisfied that circumstances exist making it just and convenient that this Order be made

IT IS ORDERED THAT

1. The Tribunal hereby appoints the Manager as manager of the Property, to carry out the Management Functions fairly, impartially and in accordance with the Leases and hereby confers on the Manager all the functions described in this order, including such functions of a receiver as are specified in this order, subject to paragraph 2 below. For the duration of his appointment the Manager shall have all such powers and rights as may be necessary and convenient to carry out the Management Functions and in particular the power to:
 - a. receive the rents, profits and other monies payable under the Leases and all monies (save for the annual rent) payable under the Leases;
 - b. carry out the Landlord’s obligations under the Leases and in particular and without prejudice to the foregoing:

- (a) the Landlord's obligations to provide services;
- (b) the Landlord's repair and maintenance obligations;
- (c) the Landlord's obligations to perform duties and to make payments as provided in any of the Leases;
- (d) the Landlord's power to grant consent; and
 - (a) to make all payments due to be paid by the reversioner under or arising from the Leases
 - (b) to insure and keep insured (unless such insurance shall have been vitiated by any act or default of the Lessee or the owner lessee or occupier by any other part of the Building) the Building and landlords fixtures therein against loss or damage by fire and such other risks as the Lessor shall reasonably deem desirable or expedient in some insurance office or with underwriters of repute and in such sum as the Lessors Surveyors shall reasonably consider to be the full replacement value thereof including architects' and Surveyors' fees
 - (c) and to prepare annual service charge accounts in accordance with the terms of the Leases
- c. enforce the tenant's obligations under the Leases;
- d. create and manage a service charge reserve fund;
- e. delegate to other employees of the Manager, appoint solicitors, barristers, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his management functions;
- f. appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant;
- g. bring or defend, whether in his own name or if necessary in the name of the Second Respondent (or the Landlord), any legal action or dispute, including enforcement action, and whether through the courts the tribunal or otherwise, connection with the Leases and/or this Order, including but not limited to proceedings against or brought by any Lessee or the Second Respondent (or the Landlord) in respect of the payment of rents, service

- charges, other monies due, or compliance with any obligation, under the Lease and/or this Order, and if necessary to make any arrangement or compromise in the name of the Second Respondent (or the Landlord);
- h. enter into or terminate any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of the Management Functions (save that the Manager cannot be required to effect any contract or arrangement where the same would, in his reasonable opinion, result in the service charge account going into deficit);
 - i. open and operate client bank accounts in relation to the management of the Property;
 - j. rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the Second Respondent (or the Landlord) or any Lessee owing sums of money under the Leases and/or this order;
 - k. borrow all sums reasonably required by the Manager for the performance of his functions and duties, and the exercise of his powers under this order in the event of there being any arrears, or other shortfalls of rent or service charge contributions due from the Lessees or any sums due from the Second Respondent, such borrowing to be secured (if necessary) on the interest of the Second Respondent in the Property or any part thereof **PROVIDED THAT** the Manager shall not secure any borrowing as aforesaid without the consent of the Second Respondent (not to be unreasonably withheld), or in the default of the Second Respondent's consent, without further order of the Tribunal.
2. The Management Functions shall not include an obligation to maintain or keep in repair any premises in the Property which revert to the Landlord due to forfeiture of one of the Leases, save for any parts of those premises which form part of the structure of the Property and save for any Service Media which serve those premises in common with other premises within the Property.
 3. For the avoidance of doubt, responsibility for the cost of repair of those parts of the Property from which under paragraph 2 above (if any) the Manager expressly does not have responsibility shall rest with the Landlord or (if the contract between them so provides) with any tenant of the Landlord in respect of a tenancy which does not fall within the definition of the Leases.

4. In relation to any future lease within the definition of Leases the following shall apply.
 - a. The lease shall be granted in a form first approved by the Manager (not to be unreasonably withheld);
 - b. Forthwith following grant, a copy shall be provided to the Manager.
5. The Landlord shall bear responsibility for the cost of all repairs and other works needing to be carried out to any premises within paragraph 3 which is not subject to a Lease as so defined other than to those elements which either (a) form part of the structure of the Property or (b) constitute Service Media which serve the Garage Premise in common with other premises within the Property. The cost of repair of anything falling within (a) or (b) above shall be split between the Lessees and the Landlord in accordance with the service charge proportions set out in the Leases.
6. For the avoidance of doubt, the Manager shall not be entitled to pass on to the Lessees or to the Landlord the cost of making improvements to the Property save insofar as the Leases provide for this or an improvement constitutes a reasonable and economic way of carrying out a repair.
7. The Manager shall be reimbursed in respect of all costs, disbursements and expenses (including for the avoidance of doubt, the fees of barristers and/or solicitors and other professionals) of and incidental to carrying out the Management Functions and (without prejudice to the foregoing or paragraph 11 below) any application under Part II of the 1987 Act brought by him or in respect of which he is an interested person.
8. The Manager shall in carrying out the Management Functions exercise the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the carrying out of the said functions and shall act in accordance with the RICS Service Charge Residential Management Code.

9. From the date of this Order, no other party shall be entitled to exercise a management function in respect of the Property where the same is a responsibility of the Manager under this order.
10. The Second Respondent and the Lessees and any agents or servants thereof shall give reasonable assistance and cooperation to the Manager in pursuance of his duties and powers under this order and shall not interfere or attempt to interfere with the exercise of any of his said duties and powers. And without prejudice to the generality of the foregoing hereof, the Second Respondent (the Landlord) shall permit the Manager and assist him as he reasonably requires to serve upon Lessees any Notices under section 146 of the Law of Property Act 1925 or exercise any right of forfeiture or re-entry or anything incidental or in contemplation of the same.
11. The manager shall be entitled to remuneration in accordance with the Schedule of Fees to this order.
12. Payment to the Manager of all sums to which he is entitled to receive under this order shall be made as follows:
 - a. In so far as the Manager incurs the Service Charge Expenditure,
 - (i) payments shall be made by the Lessees as part of their service charge;
 - (ii) the Manager may make interim demands at any time for payments on account of their service charge which the Lessees shall pay on demand; and
 - (iii) payment of a service charge shall be made by the Landlord (insofar as it has not already been paid) until such time as a future Lease is in place, the Landlord paying the proportion previously payable under any forfeited Lease (if applicable).
 - b. From payments made by the Lessees or the Second Respondent by way of service charges, rents, interest on arrears and any other monies which the Manager may receive as manager of the Property.
13. The Manager shall be entitled to include within the service charge his reasonable costs incurred in connection with the Application.

14. This order shall remain in force for 4 years from 10 August 2020 or (if earlier) until varied or discharged by the Tribunal on the application of any person interested under Section 24(9) of the 1987 Act.
15. The Manager is directed to register this order against the Second Respondent's leasehold estate and the Leaseholders' respective leasehold estates as registered at HM Land Registry.
16. The obligations contained in this order shall bind any successor in title or person deriving title and the existence and terms of this order must be disclosed to any person seeking to acquire any of the Leases any leasehold interest in the Property or the freehold title to the Property.
17. The Manager may apply to the Tribunal for further directions in accordance with section 24(4) of the 1987 Act. Such directions may include, but are not limited to:
 - a. the consequences of any failure by any party to comply with an obligation imposed by this order;
 - b. for directions generally; and
 - c. directions in the event that there are insufficient sums held by him to discharge his obligations under this order and/or to pay his remuneration.
18. The Manager shall be guided by the Management Plan annexed hereto as Schedule 2

Schedule to the Management Order

Schedule of Fees

1. Fees for the management functions given to the Manager under this order (with the exception of supervision of Major Works and carrying out the Work to which paragraphs 3 or 4 below applies) shall be £400.00 plus VAT per annum. Major works and any other duties outside the scope of the annual fee (including those referred to in 2-4 below) shall be dealt with in accordance with the RICS Service Charge Residential Code.

2. An additional charge shall be made in relation to the arrangement and supervision of Major Works (including the preparation and service of any statutory consultation notices) on the basis of a maximum fee of 10% plus VAT of the cost of the work net of VAT. **PROVIDED ALWAYS** that this percentage fee will be subject to a reasonable reduction to take into account work already carried out prior to the appointment of the Manager
3. An additional charge shall be made for the Manager's time in arranging and entering into any QLTA (including carrying out any statutory consultation) such time to be charged on an hourly rate basis, as shall other activities required of the manager that fall outside normal management, such as negotiating licenses to alter with fees charged back to leaseholders where appropriate.
4. If the recovery of monies payable under the Leases or this order or any other legal dispute develops to the stage that requires Manager's continuous involvement and/or assistance to solicitors, barrister or any other professional person and/or attendance at and/or the giving of evidence in court or the Tribunal (or other forum for the resolution of disputes), the Manager's time shall be charged at an hourly rate of [£250] plus VAT

Annexure to Draft Management Order

Management Plan for Tribunal appointed manager

Objectives:

1. To review urgently the heating arrangements for the building; to make an independent audit of which flats have installed their own heating systems (detailing type of power source used and any payments received from service charge funds); and to set out proposals for resolution in the long term taking proper account of the lease terms.
2. To review urgently lift repair/replacement scheme proposals in order to select the most efficient long term repair/replacement.
3. To review all other major capital works schemes proposed including the proposed cold water system replacement scheme with a view to prioritising, analysing and costing.
4. To review cash requirements and service charge arrears, re-scheduling payment of the latter where appropriate.

5. To have any outstanding service charge accounts completed with the assistance of an independent external auditor. Investigation of any unauthorised or unaccounted for payments should be made.
6. The Manager shall seek to obtain details of all existing contracts but may seek to terminate or renegotiate these if there are good reasons for doing so. Likewise the Manager will have due regard to recent Reports as referred to in the Schedule hereto
7. Where appropriate the Manager may take into account the views of the leaseholders.

Schedule:

- a. contract for cleaning of the common parts with Luminata Vinau
- b. insurance cover with Aviva (in association with St. Giles)
- c. contracts for CCT and entry system services with Axel Oudijk IT Services dated 13/032020
- d. Report of The Lift Consultancy (Revision 'B' dated 25th October 2019); and
- e. CBG Consultants Report and specification prepared by Berrys dated 25th September 2019 (cold water system)

Judge Professor Robert Abbey 04 August 2020

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £5,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondent or the Tribunal.
2. That no later than four weeks after the date of this order the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicants and the Respondent shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund).
3. The rights and liabilities of the First Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon 10 August 2020 become rights and liabilities of the Manager.
4. The Manager shall account forthwith to the Second Respondent for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.
5. By no later than one year, the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the property up to that date.
6. Within 28 days of the conclusion of the management order, the Manager shall prepare and submit a brief written report for the Tribunal, on the progress and outcome of the management of the property up to that date, to include final closing accounts, and shall serve copies on the lessor and lessees; and the Manager shall answer within 14 days any queries raised within 14 days of service of the copies; and, thereafter, the Manager shall reimburse any unexpended monies to the paying parties; or, if it be the case, to any new tribunal-appointed manager; or, in the case of dispute, as decided by the Tribunal upon application by any interested party.
7. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- (i) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (ii) Demand and collect ground rents, service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (iii) Demand and collect his own service charge payable by the Respondent (as if he were a lessee), in respect of any un-leased premises in the Property which are retained by the Respondent.
- (iv) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- (v) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- (i) Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the Manager.
- (ii) Maintain efficient records and books of account which are open for inspection by the lessor and lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.
- (iii) Maintain on trust an interest bearing account/s at such bank or building society as the Manager shall from time to time decide, into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.
- (iv) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

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

- (ii) The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondent and the lessees.
- (iii) The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.

Complaints procedure

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