



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

Case Reference	: CHI/00HH/LAM/2021/0004
Property	: Albert Court, Market Street, Torquay, Devon TQ1 3AH.
Applicants	: Krzysztof Kazimierz Pilch, Adrian Suchorski and Malgorzata Suchorska, Anthony Cattermull, Krzysztof Nowosad, and Monika Nowosad and Krzysztof Nogas (leaseholders) and Yvette Condren (Nominated Manager)
Respondent	: Steven Millar (freeholder)
Type of Application	: Appointment of a manager – Section 24 Landlord and Tenant Act 1987 (the Act)
Tribunal Members	: Judge C A Rai (Chairman) Mr M C Woodrow MRICS
Date type and venue of Hearing	: 8 July 2021 CVP Virtual by Video (V)
Date of Decision	: 27 August 2021

MANAGEMENT ORDER

1. In accordance with section 24(1) of the Act Yvette Condren is appointed as manager of (the Property).
2. The appointment shall start on the 1 September 2021 (the start date) and shall end on the 31 August 2022 (the end date).

3. The purpose of the Management Order is to provide for adequate management of the Property which will include taking steps to resolve the following problems of inadequate management identified by the Tribunal.
 - a. Disrepair of the lift
 - b. Nuisance caused by one of Mr Millar's tenants parking an unroadworthy car in car park/yard comprising a common part with his consent
 - c. Late and insufficient payment of maintenance contributions by Mr Millar for the retained flats
 - d. Disrepair to the roof
 - e. Failure of the electric gates
 - f. No painting or other decoration of common parts
 - g. Inadequate cleaning of external common parts
 - h. Failure to provide evidence of buildings insurance
 - i. Failure to provide and keep service charge accounts prior to Mrs Dixon's period of management
 - j. Failure by freeholder to demand ground rent regularly and properly
 - k. Original freeholder and his nominated management were unavailable and could not be contacted by leaseholders when problems were identified which needed resolving.
4. All of the identified management omissions are listed in the section 22 Notice which was served by the Applicants on 15 July 2021. The Respondent freeholder replied to this notice on 4 August 2021.
5. The manager shall manage the Property in accordance with the duties of a Manager set out in the Service Charge Residential Management Code, 3rd edition (the RICS 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 of the Leasehold Reform Housing and Urban Development Act 1993.
6. The manager must perform her duties under this Order **independently** and has an overriding duty to this tribunal.
7. The initial service charge year shall be the period between 1 September 2021 until 24 December 2021 and thereafter 25 December 2021 until 30 August 2022.
8. The manager shall operate a complaints procedure in accordance with, or substantially similar to, the requirements of the Royal Institution of Chartered Surveyors.
9. The manager shall register the Order against the Registered Title to the freehold of the Property as a restriction under the Land Registration Act 2002 or any subsequent Act in accordance with section 28(4) of the Act.
10. From the date this Order comes into effect, no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the manager under this Order.

11. The manager shall act fairly and impartially in her dealings in respect of the Property.
12. When performing her functions under this Order, the manager shall 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 proper performance of the said functions.
13. From the date of her appointment, and throughout the appointment, the manager must maintain appropriate professional indemnity insurance cover of at least One Million Pounds (£1,000,000) and shall provide copies of the certificate of the liability insurance together with a copy of the policy document to the Tribunal within 14 days of the date of this decision. The certificate must specifically state that it applies to Mrs Condren's duty as a tribunal appointed manager. In addition, Mrs Condren shall supply the tribunal with a signed letter from her insurer confirming that it has received notification of the appointment as manager of the Property within 14 days from the date of this order. (All correspondence and documents must be sent to the Tribunal in an electronic form.)
14. The manager shall apply all amounts received by her in the performance of the Landlord's covenants under the leases of the flats within the Property.
15. The manager shall be entitled to apply to the Tribunal for further directions.
16. The manager shall inform all the lessees of the Property and the freeholder of her appointment and her powers under the Order within 14 days from the date of her appointment.
17. The manager or any other interested person may apply to vary or discharge this Order pursuant to the provisions of section 24(9) of the Act.
18. Any application to extend or renew this order should be made at least **three months before** the end date and must include a report of the management of the Property during the period of the appointment (from the start date to the date of the application).
19. In accordance with paragraph 4 of directions contained in the Tribunal's Decision dated 23 September 2019, Mrs Angela Dixon was obliged within 28 days of 31 January 2020 to 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. Copies of that report and accounts should have been served on the lessor and the lessees. Mrs Dixon should thereafter have dealt with any questions raised by them within 14 days of receipt of the accounts and report and accounted to the paying parties for all unexpended monies which she held.

20. The Applicants have recently sent the Tribunal copies of service charge accounts for the year ending 30 September 2020. These accounts refer to Angela Dixon Sales & Lettings Ltd as the Managing Agents. Mrs Dixon still has an obligation to supply a brief written report to the tribunal. She shall also account to the new tribunal appointed manager for any unexpended monies as soon as the lessor and lessees have confirmed that they have no queries or she has dealt with any queries raised by them within 14 days of her supplying them with the report and accounts. Whilst Mrs Dixon is not legally obliged to supply information to the Tribunal for her management during the period between 1 October 2020 and the termination of her appointment as managing agent, it would be desirable and helpful to the parties if she liaised with them to provide this information.
21. The manager is granted the following functions and owes the following duties relating to the management of the Property.

Functions and Duties

Insurance and Service Charges

1. The manager shall obtain and maintain appropriate building insurance for the Property and ensure that the manager's interest and the lessees' interest is noted on the insurance policy.
2. The manager must prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees as if such provisions were contained in the leases.
3. Following a meeting with the lessees whether "virtual" or face to face, the manager shall set, demand and collect service charges (including, if agreed, contributions to a sinking fund), insurance premiums and any other payment from the lessees reasonably needed to insure and maintain the building.
4. The manager shall collect all service charges and insurance premium contributions payable under the leases as varied by the Order. For the avoidance of doubt, this Order does not displace covenants in the leases and the lessees remain bound by them.
5. To ensure that the manager has adequate funds to manage the Property the manager may immediately collect £300 from each lessee and £300 per flat from the freeholder for each retained or undeveloped flat.
6. The manager may demand additional payments on account of the Service Charge during the Service Charge Year if the cost of complying with her obligations exceed the Service Charges already collected during the relevant Service Charge Year.

7. The manager may recover one twenty fourth share of all costs reasonably incurred in managing the Property from each of the existing eleven leaseholders and the balance of contribution shall be paid by the freeholder in respect of the remaining seven developed flats and the six undeveloped flats, who shall contribute to all costs incurred by the manager in carrying out her management obligations during the term of the management Order unless and until the freeholder disposes of his interest in any of those flats to a third party.
8. The manager shall have no obligation to commission or carry out any work at the Property until the Lessees have put her in funds to cover the costs of those works by collectively paying the sums she has demanded.
9. All monies received by the manager in respect of the Property shall be held in a designated trust bank account.
10. The manager has the right to enforce payment of the service charges and may instruct solicitors to recover unpaid rents and service charges and any other monies properly demanded by the manager and due to her including if appropriate where liability arises prior to her appointment.
11. All rights and liabilities of the Landlord arising under any contracts of insurance, and/or contracts for the provision of services to the Property shall upon the date of the appointment become rights and liabilities of the manager.
12. The manager shall 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

13. The manager shall:-
 - a. Prepare and submit to the freeholder and the lessees, at the same time, an annual statement of account detailing all monies received and expended. The accounts may be certified by an external auditor, if required by the manager or the lessees.
 - b. Maintain efficient records and books of account which are open for inspection by the lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.
 - c. 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 service charge contributions and all other monies arising under the leases shall be paid. [See section 42 of the Landlord and Tenant Act 1985.]
 - d. Account for all monies collected from the lessees in accordance with the accounts regulations as issued by the Royal Institution of Chartered Surveyors. All service charge accounts should comply with Tech 03/11 as defined in the RICS Code.
 - e. Use reasonable endeavours to obtain a reconciliation of service charge funds collected and service charges expended for the period from 1 October 2020 and the date of the termination of Mrs Dixon's company as managing agents.

Maintenance

14. The manager shall :-
- a. Subject to collecting sufficient prior funds, carry out all required repair and maintenance issues relating to the Property, including instructing contractors to attend and rectify problems and recover the cost of doing so as service charges payable under the lease.
 - b. Deal with all other building maintenance relating to the services and structure of the Property. All works to be carried out to the Property must be undertaken in the interest of good estate management and she must make appropriate recommendations to the lessees.
 - c. Set up a planned maintenance programme for the period of her appointment which shall be agreed with the lessees and copied to them to enable her to keep the exterior and interior common parts of the Property, including all communal services, in repair.

Fees

15. The manager's fees for the above mentioned management services will be a basic fee of £200 per annum per flat for the first year of her appointment and thereafter subject to an annual review. Those services shall include the services set out in paragraph 3.4 of the RICS Code.
16. Any additional works not covered by the basic fee may be charged at an hourly rate not exceeding £40 per hour but the manager will not make this charge without first giving written notice to all the lessees as to the reasons an additional charge will be levied.
17. Commissioning and supervising major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) may be charged for on a time basis at the hourly rate disclosed.
18. Any charges by the manager for dealing with solicitors' enquiries on transfer will be made on a time related basis and will be payable solely by the outgoing lessee.
19. VAT will be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing
20. The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above, may be charged for on a time basis at the hourly rate disclosed.
21. The fees are to be collected from the lessees and the landlord under the service charge mechanisms of their lease.

Legal Proceedings

22. In **Adrian Suchorski and others v Richard Norton [2021] UKUT 166 (LC)** Martin Rodger QC, Deputy Chamber President of the Upper Tribunal stated it was necessary for the Tribunal to conduct an enquiry to establish how much money Richard Norton received from the leaseholders Property during his appointment and made an order giving the applicants (in that case), and any other leaseholders affected, the opportunity to provide evidence of the sums paid to Richard Norton during the period of his appointment as manager of the Property. The manager shall obtain and collate evidence from all lessees who made payments to Mr Norton, such as extracts from bank statements. This information shall be submitted to this tribunal to enable a total to be established whereupon Mr Norton will be required to repay that sum to the lessees who made the payments. [See paragraph 28 of the decision an electronic copy of which has been supplied with this decision].
23. The manager may bring or defend any court or tribunal proceedings relating to management of the Property (whether contractual or tortious) and may continue to bring or defend proceedings commenced during the appointment, after the end of her appointment.
24. Such entitlement includes bringing proceedings in respect of arrears of service charge and rent attributable to any of the flats in the Property, including, where appropriate, proceedings before this tribunal or the courts under section 27A of the Landlord and Tenant Act 1985 or section 168(4) and schedule 11 of the Commonhold and Leasehold Reform Act 2002 and shall further include any appeal against any decision made in any such proceedings.
25. The manager may instruct solicitors, counsel, and other professionals in seeking to bring or defend legal proceedings and is entitled to be reimbursed from the service charge account in respect of costs, disbursements or VAT reasonably incurred in doing so. If costs are recovered direct from a defaulting lessee, or the landlord those costs should be refunded to the service charge account.

Reporting

26. By no later than 31 March 2022, 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, providing a copy to the lessees of the Property at the same time.

End of Appointment

27. Within 28 days of the conclusion of the Management Order (howsoever terminated) 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. The manager shall also serve copies of the report and accounts on the lessees who may raise queries on them within 14 days. 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 on the application by an interested party.

Disputes

28. In the event of a dispute about whether a service charge demanded by the manager is payable, a lessee or the manager is entitled to make an application to this tribunal under section 27A of the Landlord and Tenant Act 1985.
29. In the event of a dispute regarding any sum payable under this Order, rather than under the lease (including as to the remuneration payable to the manager and litigation costs incurred by the manager) a lessee or the manager may apply to the tribunal seeking a determination as to whether the sum in dispute is payable, and if so, in what amount.
30. In the event of a dispute regarding the reimbursement of unexpended monies at the end of the manager's appointment, the manager, a lessee, or the Landlord may apply to the tribunal for a determination as to what monies, if any, are payable, to whom, and in what amount.

Judge C A Rai



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Applicant	:	Krzysztof Kazimierz Pilch, Adrian Suchorski and Malgorzata Suchorska, Anthony Cattemull, Krzysztof Nowosad, and Monika Nowosad and Krzysztof Nogas (leaseholders) and Yvette Condren (Nominated Manager)
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DECISION AND REASONS

1. This decision was made following a remote Hearing which was not objected to by the parties. It was attended by Mr Pilch and Mr Suchorski (leaseholders), Mr Millar (freeholder), Ms Walker of DN Property Management, Mrs Condren and the Tribunal members by video.
2. Initially Mr Suchorski was unable to join the Hearing but he did later. Mrs Condren was unable to operate her camera but could “see” the other attendees and could be heard by the other parties, including the Tribunal, throughout the Hearing. A face to face Hearing was not held as it was not practicable.

3. The documents to which we were referred at the Hearing were in a single hearing bundle (91 pages). Subsequently the Tribunal received a copy of the section 22 notice (2 pages), The freeholder first response dated 4 August 2021 (3 pages), three screenshots of emails (1 page), an excel spreadsheet (1 page), projected service charge expenditure for the year ending 31 December 2016 (2 pages) and a copy bank statement for a business account in the name of Darren Stocks for a period between March and September 2017 (2 pages). The Applicant provided a further response (2 pages), and a copy of the accounts for 2019/2020 (8 pages). The freeholder's second response is dated 11 August 2021 (2 pages).
4. The Property is a converted three storey Victorian building located in the centre of Torquay. The Property fronts on to Market Street. A yard behind the building is accessed through two sets of electronically controlled gates. The flats within the building front all face the yard. The ground floor of the building, formerly shops, has not been converted. Previous tribunals were told that the developer intended to construct an additional six flats. The eighteen existing flats are located on the first, second and third floors. Eleven flats have been sold to leaseholders. The Respondent retained ownership of the other seven flats and lets these to tenants. External walkways front the eighteen flats at three levels. A lift, constructed as an external addition to the original building, is located next to the external concrete staircase which also provides access to all the flats.
5. The Tribunal previously appointed two managers. Mr Richard Norton was appointed in 2017. He failed to fulfil his duties to the Tribunal. Following an application to the Tribunal to vary the management order, he was discharged on 23 September 2019. At the same time Mrs Angela Dixon was appointed as tribunal manger in his place, on an interlocutory basis, for six months from 23 September 2019. Her appointment expired on 31 January 2020.
6. Mrs Dixon continued to manage the Property after the expiry of her appointment. She did not apply to the Tribunal for an extension of her appointment.
7. Mrs Dixon has not complied fully with the order appointing her as she did not submit a final report to the Tribunal or accounts up to end date of her appointment. The Tribunal has referred to these omissions later in this decision and taken account of the further evidence disclosed by the Applicants following the Hearing.
8. The Applicants applied to the Tribunal dated 29 March 2021 for the appointment of a manager of the Property. Originally, they sought to re-appoint Mrs Dixon; later they amended their application seeking to appoint Mrs Condren instead.
9. The Tribunal was told that Mrs Condren had, until recently, been employed by Mrs Dixon and had assumed responsibility for the day to day management of the Property during the term of Mrs Dixon's appointment. She has built up a good working relationship with the Applicants.

10. The Tribunal issued Directions dated 12 May 2021 which, amongst other things, directed the Applicants to serve a section 22 Notice on the Respondent. At the Hearing Mr Pilch confirmed that this had not been done. The Tribunal explained that it could not consider the Application unless the notice was served. At the Hearing Mr Pilch admitted he had misunderstood that the Applicants had been directed to serve that notice. The Tribunal told the parties that it would write to them following the Hearing and explain what they must do.
11. Mr Pilch told the Tribunal that following Mr Norton's appointment as Manager by the Tribunal (on 1 November 2017), he was unable to contact him. He could not obtain any information about the costs of the services. By talking to his neighbours, he was able to establish that it had been impossible to obtain sufficient contributions from the owners of all the flats to cover the costs of the services because the freeholder was not making sufficient contributions for both the undeveloped flats and those flats he retained. The leases provide for each lessee to pay 1/24 (4.16%) of the annual costs.
12. When it became apparent that Mr Norton was not fulfilling his duties as the Tribunal appointed manager, the lessees applied to the Tribunal for a variation of the Management order. This application resulted in the discharge of Mr Norton as manager and the Tribunal making an interlocutory order appointing Mrs Angela Dixon for six months.
13. No further applications were received and Mrs Dixon continued to manage the Property following the expiry of her appointment as manager. The scope and terms of her subsequent management was not explained to the Tribunal during the Hearing.
14. Following the submission of their application to the Tribunal, Mr Pilch told the Tribunal that he had discovered, by chance, that Mrs Dixon had sold her business. He said that she had not informed the Applicants or any of the lessees of the sale.
15. Mrs Condren left Mrs Dixon's employment and set up her own management business. Mr Pilch said that the current leaseholders wish to continue their relationship with Mrs Condren which is why they applied for her to be appointed by the Tribunal as manager of the Property instead of Mrs Dixon.
16. Mrs Condren confirmed to the Tribunal that she is willing to take on the management of the Property. She told the Tribunal that she has been managing 96 flats in 9 blocks, the largest of which contains 26 units. She said her most challenging task had been to explain and carry out a section 20 consultation exercise prior to obtaining contributions from the leaseholders to fund and complete major works. She was able to answer the questions which the Tribunal asked her about the procedure.
17. Mrs Condren said that she has had previous letting experience and set up her company about three years ago but only recently obtained appropriate insurance for the management of blocks of flats.

18. Mrs Condren is currently a level 3 associate member of the Institute of Residential Property Management (IRPM) and is working towards obtaining level 4 which would entitle her to refer to that accreditation on her website. She obtained appropriate indemnity insurance in June of 2021 [page 44].
19. In response to an enquiry from the Tribunal, Mrs Condren suggested that the term of appointment should be one year. The Tribunal suggested that it was unlikely that this would be long enough to carry out the works required. Mrs Condren said that she needed to ensure that the lift was operating reliably and she would need to arrange for the electronic gates to be repaired. Her main priority was to manage resources and ensure that the service charges demanded will enable the provision of the necessary services.
20. Mr Millar told the Tribunal that he had not received a copy of the Application. He said that the address used to send him papers was wrong and that he was not skilled in electronic communication.
21. The Tribunal stated that since the Covid-19 pandemic it was working remotely and for that reason, it currently sends and receives most communications electronically.
22. Subsequent investigations revealed that Mr Millar had received the information the Tribunal sent to him about connecting to the Hearing. That correspondence was sent electronically to the same email address used by the Applicant to send him the application.
23. Mr Millar, in contradiction of his previous statement, also told the Tribunal that he had responded to the Application by letter to the Tribunal office. However, a subsequent investigation failed to reveal any record that Mr Millar had responded to the application.
24. The Tribunal informed Mr Millar that he would be given an opportunity to respond to the Application following receipt of the section 22 notice. It told both parties that the case officer would email them following the hearing explaining what must be done and providing Mr Millar with at least 7 days in which to respond.
25. Following the Hearing, the Tribunal sent a letter to the parties dated 13 July 2021 by email which advised the Applicants that they must serve a section 22 notice on the freeholder which could be done by email to the same email address as they had been using for Mr Millar. Mr Millar was required to respond within 7 days of receipt of that notice but advised that he could, if required, agree an extension of the time with the Applicants and should notify the Tribunal if both accepted this was necessary.
26. The Tribunal subsequently received a copy of the section 22 notice dated 15 July 2021, Mr Millar's response dated 4 August 2021, images of three screen shots showing ground rent demands for flats 3, 5, 7 & 11; an email from Angela Dixon to Mr Millar dated 29 July 2021 and an email from Mrs Dixon to Mrs Walker dated 9 February 2021; and an excel spreadsheet

relating to ground rent in respect of Flats 3, 5, 6, 7, 10, 11, 12, 13, 14, 15, and 18 for periods up to September 2020.

27. On 10 August 2021 the Tribunal received a short response from the Applicants regarding Mr Millar's response together with a copy of the service charge accounts for Albert Court for the year ending 30 September 2020. On 11 August 2021 Mr Millar sent a second response.

The Section 22 Notice and the grounds of the Application

28. The Applicants referred to the following grounds in support of the Application:-
- a. Disrepair of the lift
 - b. Nuisance caused by Mr Millar's tenant including an unroadworthy car parked in the car park with his consent
 - c. Late payment of maintenance contributions for the retained flats coupled with inadequate contributions for the undeveloped part of the building
 - d. Disrepair to the roof
 - e. Failure of electric gate
 - f. No painting or decoration of external common parts
 - g. Until the appointment of Mrs Dixon, lack of cleaning of external common parts
 - h. A failure to provide evidence of buildings insurance
 - i. Past failure to provide and keep service charge accounts
 - j. Past failure to demand ground rent, and
 - k. Absence of management and lack of "management" contact prior to the appointment of Mrs Dixon.

The freeholder's (Mr Millar's) response

29. Mr Millar denied he was in breach of his obligations to the Applicants. He said that "all queries regarding the lift should be referred to the managing company which was appointed previously by the Tribunal". He provided what he said was a copy of a screenshot stating that the lift company has been paid for the lift works and the lift was repaired in May 2017. (The Tribunal assumed this is a reference to the bank statement in the name of Darren Stocks on which it has later commented). He said that the unroadworthy vehicle parked in the car park was not causing an obstruction and was parked on land belonging to him.
30. Mr Millar denied he had not contributed towards maintenance and claimed he had contributed £600 per month since October 2020. He suggested that "Dixons" had collected ground rent on his behalf which implied that this was retained towards his maintenance contributions.
31. Mr Millar denied that his tenants caused any nuisance and provided a screenshot referring to the resolution of a noise complaint in February 2020.
32. Mr Millar omitted to comment on the Applicant's reference to roof repairs, the entrance gate and lack of decoration stating that these omissions should be referred to the managing agent but he was happy to proceed and issue section 20 notices and hold an "annual general meeting" to determine which works were a priority.

33. Mr Millar said he always complied with all the covenants in relation to the multiple properties that he owned. He suggested that based on the email correspondence between Ms Walker and Mrs Dixon, which he had disclosed, Mrs Condren had not behaved professionally and had attempted to take business from Mrs Dixon. He said that as freeholder of seven flats and six shops he wished to see “a trustworthy person” managing the Property.
34. Mr Millar said that in the past “the accountant” has been involved in the management which has been taken away from him and to support this, he enclosed a copy of “the Accounts for 2016”.
35. Mr Millar said that if Mrs Condren were to be appointed, she would be the fourth manager in as many years. He said that the Tribunal appointed Crown Property Management, Richard Norton and Dixons.
36. Finally, Mr Millar said he intended to “apply for a limited company and appoint leaseholders as directors to run the block”. He suggested using Mrs Walker “in advisory capacity as she has over 5 years of solely block management experience in order to keep service charges lower.” and offered to arrange a meeting with all the leaseholders.
37. In the Applicants’ response to Mr Millar’s statement, they submit that Mr Millar’s monthly contribution of £600 is in respect of his seven flats. However, he is paying nothing for the undeveloped ground floor. Since the leases provide for a 1/24 contribution, the contribution will always be inadequate. Whilst they accept that ground rents can be put towards the deficit, the total amount per year of £1,650 (11 x £150) is inadequate to make up the shortfall in Mr Millar’s contribution.
38. The Applicants also identified that Mr Millar’s evidence regarding expenditure on lift repairs related to a “historic” period between March and September 2017.
39. The Applicants stated again that Mr Millar cannot allow his tenant to keep an unroadworthy vehicle in the car park and by doing so, is in breach of the covenants in the Lease.
40. The Applicants have provided a copy of the accounts for the year ending September 2020 which were prepared and circulated by Mrs Condren whilst she was employed by Mrs Dixon. Mr Millar appears to have had no part in the preparation and circulation of these accounts.
41. The Applicants disputed that lower service charges would be of any benefit to the leaseholders in maintaining the Property. They stated that Mr Millar has never had a management plan for the Property. They also stated that his statement alleging misconduct on the part of Mrs Condren, whilst inaccurate, is also irrelevant in the context of their application.
42. The Applicants stated that the ground rent demands sent out on behalf of the Respondent by Mrs Walker did not comply with the Section 177 of the Commonhold and Leasehold Reform Act 2002. They consider that is evidence of her unsuitability to be involved in the role of managing agent.

The Lease

43. The hearing bundle included a copy of a lease of one flat in the Property. The Tribunal has assumed, in the absence of contrary submissions from either party, that all the leases are in a similar form containing the same covenants and obligations. The name of the lessee and the number of the flat were both redacted. It referred (confusingly) to a demise of 125 years from 25 December 2007 in the Prescribed Clauses but a demise of 125 years from 25 December 2013 in the definition of Term in the lease. The lease was apparently granted in 2014 so the Tribunal has assumed that the term runs from 2013, although nothing turns on that.
44. There are no plans attached to the Lease and the Estate is defined by reference to “Plan A” on which it should be shown edged red. The Tribunal has assumed that it includes the car parking areas as these are included within the areas the maintenance of which is a lessor responsibility.
45. The lessee has the right to park “a roadworthy vehicle in an off road parking space”, paragraph 12 of the First Schedule [page 24].
46. Ground rent is payable in advance on 25 December in each year.
47. The Maintenance Charge is described in the Sixth Schedule as a yearly sum equal to 4.1666 recurring percent of the total of the lessor’s costs of :-
 - a. complying with the covenants in paragraphs 2 – 5 and 9 and 10 of the Fourth Schedule and
 - b. managing agents’ fees
 - c. costs of ascertaining Maintenance Charge to include auditors’ costs and bookkeeping costs
 - d. a reserve fund contribution
 - e. hire charges for communal refuse bins
 - f. other expenses incurred by lessor in proper and convenient management and running of the Estate
 - g. any Value Added or other tax payable in respect of all costs within the other paragraphs of the Sixth Schedule
48. The Maintenance Charge is payable by two equal payments on 24 June and 25 December. There is a provision for any balance due because the payment estimated was insufficient in any year to be paid once an Auditor’s certificate has been served on the lessees.
49. The lessors’ obligations are contained in the Fourth Schedule to the Lease and require him to keep in good and substantial repair and condition:-
 - a. the roofs and external and load bearing walls, foundations, main structure, passenger lift, gutters and drainpipes, chimneys and chimney stacks of the Building and all pipes, sewers, pumps, drains, cables and wires and other conducting media in under or upon the Building and the Estate serving the Flat in common with other parts of the Building and all parts of the Building not comprised in this lease or a lease of any other part of the Building.
 - b. the entrances porches hallways passageways landing and staircases in the Building retained by the Landlord

- c. the driveway footpaths cycle store and bin areas of the Estate and any other parts of the lease not comprised in the lease or a lease of another part of the Building
 - d. the boundary walls or fences
 - e. any entry phone system electric gates or other communal security systems etc, and
 - f. any car parking area or areas [page 31].
50. Paragraph 10 of the Fourth Schedule obliges the lessor to keep proper books of account in respect of expenditure and contributions received from the lessees and, as soon as practicable after 24 December in each year deliver to each lessee “a fair summary in writing certified by a qualified Accountant” of the costs incurred and monies expended by the Lessor during the preceding year [page 33].
51. From the evidence that it heard, and the information in the documents supplied, the Tribunal has concluded that the lift is not currently working. The electronically controlled gates are also in need of repair. The building needs painting and the roof is leaking.
52. An unroadworthy car belonging to one of the Respondent’s tenants has been parked in the yard. That is in clear breach of the covenants in the lease, with which the Respondent is obliged to comply.
53. The Respondent has not disputed that the Building has not been painted since the leases were granted. His response was that this should be referred to the managing agent and that he will undertake section 20 consultation once works are prioritised. However, that statement is clearly “at odds” with the history of the lack of management of the Property since the Applicants’ leases were granted. On his own admission, ground rent has only recently been demanded from the lessees and, according to the Applicants, the demands served by Mrs Walker on his behalf did not comply with the Commonhold and Leasehold Reform Act 2002 (CLARA).
54. The Tribunal has not been provided with any evidence about the buildings’ insurance. There is no copy of a policy or evidence of premium payments in the bundle. However, there is reference to the cost of insurance in the list of administrative expenses listed in the “Detailed Income and Expenditure Account” for the year ended 30 September 2020.
55. The Respondent stated that he has produced a copy of the Accounts for 2016. He has not. He provided a statement of Projected Expenditure for Albert Court prepared by JR & Associates Ltd. There is no indication of that company’s expertise. The statement contains several spelling mistakes. There is no explanation as to the basis of the expenditure projections and the total has been divided by 18 not 24 so the calculation is not compliant with the Sixth Schedule to the Lease which provides for a contribution of 4.1666% (1/24). It would appear that the Respondent’s failure to contribute the appropriate percentage of the service charges was “accepted” by JR & Associates which implies either that that firm were not familiar with the content of the Lease or simply relied upon the Respondent’s representations.

56. That statement referred to payment of the service charge to Milsam Developments Ltd. The statement does not comply with the lessor's obligations in paragraph 10 of the sixth schedule to the Lease which require him to produce a fair summary of the costs incurred and monies expended during the year ending 24 December which shows how those costs will be reflected in the demands for payment and whether the amounts demanded already are less than, or exceed, the actual expenditure and will result in either a further demand or a credit. **Milsam Developments Ltd** is not listed at Companies house. Mr Millar is currently a director of **Millsam Developments Limited**. However, the Lease was granted by **Millan Homes LLP** which is listed at Companies house. Since neither party has produced any land registry evidence of the identity of the freeholder, the Tribunal does not know whether Steven Millar or Millan Homes LLP is the freeholder. The Applicants referred to Steven Millar on the Application form. Mr Millar has not disputed that he has responsibility as freeholder for the management of the Property. He is a member of Millan Homes LLP.
57. The Respondent supplied evidence, with his response, that that ground rents for three years were demanded in December 2020. The dates on the screenshots of the emails provided are not in English and the emails imply that Mrs Dixon was being instructed by and presumably, on behalf of the Respondent, to collect the ground rent due in advance in December 2020. The copies of the demands were not clear enough to enable the Tribunal to assess if the demands complied with CLARA.
58. In his response to the section 22 Notice, the Respondent suggested that he had been unaware that he had to contribute service charges for the undeveloped part of the building until he was so advised by his solicitor. He has not however accepted that the leases also provide for service charge contributions to be paid twice a year and not monthly.
59. The Tribunal accepts the Applicant's evidence that the Respondent's contributions towards service charges has been incomplete. Currently he is contributing a monthly amount of £600. The lease provides for an annual payment in advance by way of two equal six monthly payments. His contributions should amount to 13/24 of the annual budget being in respect of the seven retained flats and the six undeveloped. It appears from the evidence provided, although the exact current contribution was not disclosed, that the monthly payment together with the annual ground rent due from the eleven leaseholders would still result in a shortfall in the Respondent's contribution. As evidenced by the content of the statement of Projected Expenditure disclosed by the Respondent (which he described as accounts) he did not contribute his required share towards the service charges in past years.
60. The statement made by the Respondent that Crown Property Management was appointed by the Tribunal is not correct. The first manager appointed by the Tribunal was Mr Norton in 2017, who was subsequently discharged from that appointment in September 2019. At the same time Mrs Dixon was appointed as manager until 14 January 2020. The only period during which a Tribunal appointed manager has managed Albert Court is between 1 November 2017 and 14 January 2020.

The Law

61. Section 22 of the Act provides that before an application under section 24 is made a notice must be served on the landlord.
62. A notice under section 22 must contain the relevant information about the tenant, his address, the property concerned and that the tenant intends to apply for an order under section 24. It must identify the grounds of the application and the facts on which the tenant relies to establish those grounds.
63. The Applicants have now served an appropriate section 22 notice on Mr Millar, the freeholder. Mr Millar has responded by suggesting that he would be prepared to undertake works after calling a meeting to discuss how necessary works would be funded.
64. Under section 24 of the Act the tribunal may by order, appoint a manager to carry out, in relation to the Property, such functions in connection with the management of the Property as it thinks fit. The tribunal may only make such an order in defined circumstances. These include where the tribunal is satisfied the freeholder is in breach of any obligation owed to the tenant under the lease **and** it is just and convenient to make the order in all the circumstances of the case (Tribunal's emphasis). There are other grounds which can be considered, but in this case the Applicants have identified a variety of breaches by the Landlord to comply with his obligations in the Lease.
65. Having considered the grounds identified in the section 22 notice and the Applicants' evidence, the Tribunal has concluded that:-
 - a. Mr Millar has provided no evidence that he has ever undertaken any effective management of the Property since the eleven long leases were granted in or about 2014.
 - b. Mr Millar has not disclosed that service charge accounts have ever been produced by him, or on his behalf. Therefore, there is no evidence as to actual expenditure during the period he was responsible for the management and no explanation of the factual basis for the calculation of the service charges demanded by him, or on his behalf.
 - c. It appears that for many years Mr Millar has omitted to pay service charges for the ground floor of the building which resulted in a shortfall of 25% in the service charges every year (6/24).
 - d. The bank statements for a six month period between March and September 2017, which Mr Millar disclosed, reveal that during that period Crown Property (Darren Stocks) collected £5,302.30 (of which £1,260 was paid by Millsam) towards maintenance from which £2,292 was paid to Ideal Lifts and £1,575 was paid to Crown Property.
 - e. Mrs Dixon appears to have taken account of Mr Millar's instructions since her appointment as Manager expired, albeit the Tribunal accepts that she was attempting to recover the ground rents due to him to increase the service charges available for the maintenance of the Property.

- f. The disclosure by the Applicants of the 2020 accounts demonstrate that Mrs Dixon has only partly complied with her obligation to the Tribunal as set out in the original management order by which she was appointed. The Tribunal has not received the brief written report for the Tribunal on the progress and outcome of the management of the Property up to 14 January 2020. That report should have been accompanied by final closing accounts. Copies of that report and those accounts should have been served on the lessor and the lessees. Mrs Dixon was obliged to deal with questions raised by then within 14 days of receipt of the accounts and report and account to the paying parties for all unexpended monies which she held at that date.
 - g. Mrs Dixon has produced accounts for a one year period ending on 30 September 2020.
 - h. The lift, the entrance gates and the roof remain in disrepair and no evidence has been provided of any significant attempt to address these problems. No evidence has been provided that estimates of the costs of remedying the identified repairs have ever been obtained.
 - i. Mrs Condren has forged a relationship with the Applicants who have applied for her to be appointed as manager.
66. For the reasons already explained, the Tribunal has not found Mr Millar's submissions accurate or helpful. The Applicants have disputed the accuracy of Mr Millar's submissions. The Tribunal accepts their evidence.
67. The Tribunal is satisfied that the Applicant has identified sufficient grounds to show it is necessary to appoint a manager of the Property and that it is just and convenient to make an order appointing Mrs Condren as manager of the Property for one year.
68. Whilst the Tribunal was initially concerned with Mrs Condren's limited management experience, it acknowledges that she displayed both enthusiasm and a willingness to take on the management of the Property during the Hearing. It is essential for the benefit of the Applicants that, going forward, Mrs Condren carries out effective management of this Property. To achieve this, she and the leaseholders will need to work together and collect the outstanding service charge contributions due from the Respondent. The parties have all demonstrated a willingness to do this.
69. If any lessee of a flat within the Property finds that Mrs Condren's management of the Property is unsatisfactory, he or she will independently be able to apply to the Tribunal under section 24(9) of the Act for a variation or discharge of the management order.
70. Mrs Condren will be required to adhere to the RICS Management Code and consult all the lessees before incurring any substantial expenditure. At the Hearing, she told the Tribunal that she understands these obligations. She must fully comply with the terms of the management order to demonstrate her competency.

Judge C A Rai (Chairman)

Appeals

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.