



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

**Case reference** : **LON/00AW/LAM/2021/0011**

**HMCTS code  
(paper, video,  
audio)** : **V: CVP REMOTE**

**Property** : **21 Cheniston Gardens, London W8  
6TG**

**Applicants** : **(1) Anita Chotai  
(2) Paul Sandor**

**Representative** : **In person**

**Respondents** : **(1) Miriam Frances Mendez Lovelace  
(2) Anita Anna Holt  
(3) Lapo Niccolini  
(4) Anita Chotai**

**Representatives** : **In person**

**Type of application** : **Appointment of a manager**

**Tribunal members** : **Judge N Hawkes  
Mr T Sennett FCIEH**

**Dates and venue of  
London Panel** : **8 October 2021 10 Alfred Place,  
London WC1E 7LR**

**Date of Decision** : **22 October 2021**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVP REMOTE. A face-to-face hearing was not held because it was not practicable. The documents that the Tribunal was referred to are in a digital bundle of 100 pages (including index) provided by the Applicants as well as the Applicants' application and notice pursuant to section 22 of the Landlord and Tenant Act 1987, an official Land Registry copy of the freehold title, the proposed Manager's schedule of charges and a statement, schedule of internal works and accounts relied upon by certain of the Respondents. The orders made are described below.

## **Decisions of the Tribunal**

- (1) Mr Phil Bird BSc (Hons) PGDipSurv MIRPM AssocRICS is appointed Manager of the Property in accordance with the terms of the Management Order below.
- (2) Of the Tribunal fees paid by the Applicants in the sum of £300, Miriam Frances Lovelace, Anita Anna Holt and Lapo Niccolini are each ordered to reimburse the Applicants the sum of £60 (leaving the Applicants to contribute £60 each).
- (3) The case management decisions made by the Tribunal are set out in the body of this decision.

## **The application**

1. The Applicants seek an order under section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") appointing Mr Phil Bird BSc (Hons) PGDipSurv MIRPM AssocRICS of Colmore Gaskell Property Management Limited to manage 21 Cheniston Gardens, London W8 6TG ("the Property").
2. The Property is a Victorian building which has been converted into five flats. The Applicants, Antia Chotai and Paul Sandor, are the long lessees of flats at the Property. The four Respondents, Miriam Frances Mendez Lovelace, Anita Anna Holt, Lapo Niccolini and Anita Chotai are the freehold owners of the property. Accordingly, Mrs Chotai is both an Applicant and a Respondent.
3. The Tribunal has been informed that Miriam Mendez Lovelace and her two sons, Yannis Mendez and Sean Mendez, are the joint lessees of one flat at the Property and that Lapo Nicollini, Anita Anna Holt (also known as Ria Holt); Anita Chotai; and Paul Sandor are the lessees of the remaining four flats.

4. Directions were given on 27 July 2021 2021 by Judge Tagliavini (“the Directions”) leading up to a final hearing which took place on 8 October 2021.

### **The hearing**

5. A remote video hearing took place in this matter on 8 October 2021. All of the parties attended in person together with Mr Bird, the proposed manager. Miriam Frances Mendez Lovelace was at times represented by one of her sons with the Tribunal’s permission and, at other times, she spoke directly to the Tribunal. Mr Niccolini had to leave at approximately 12.30 pm. The other parties and the proposed manager attended for the duration of the hearing.
6. The Tribunal has identified that the issues to be determined in this appointment of manager application are as follows:
  - i. Whether a preliminary notice under section 22 of the 1987 Act has been served and, if not, whether service should be dispensed with;
  - ii. Whether there are grounds for appointing a manager;
  - iii. Whether it is just and convenient to appoint a manager;
  - iv. Whether the proposed manager is a suitable appointee; and
  - v. The terms of any management order.
7. At the commencement of the hearing, the Respondents who oppose the making of a management order sought to rely upon documents which had not been served in accordance with the Tribunal’s Directions (“the additional documents”). They explained that they had been waiting for a response to correspondence sent to the Tribunal concerning a proposed postponement of the hearing and other matters, and that they are unfamiliar with Tribunal proceedings.
8. The Tribunal determined that it would exercise its discretion to extend time under rule 6(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to enable the late documents to be admitted in evidence. This was on the basis that if, during the course of the hearing it became apparent that the Applicants would be prejudiced by virtue of having insufficient time to respond, the Tribunal would not place any weight on the evidence in question.

## **The Tribunal's determinations**

### ***Service of the preliminary notice***

9. Section 22 of the 1987 Act includes provision that:

*22.— Preliminary notice by tenant.*

*(1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on—*

*(i) the landlord,*

...

10. At the commencement of the hearing, it was asserted that Yannis Mendez and Sean Mendez may be landlords. The Tribunal noted that the preliminary notice had not been served on them and invited the Mrs Chotai to produce an official Land Registry copy of the freehold title. This established that Yannis Mendez and Sean Mendez are not landlords and that the preliminary notice had been correctly served.

### ***Whether there are grounds for appointing a manager***

11. Section 21(1) of the 1987 Act provides:

*21.— Tenant's right to apply to court for appointment of manager.*

*(1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to the appropriate tribunal for an order under section 24 appointing a manager to act in relation to those premises.*

12. Section 24(2) of the 1987 Act includes provision that:

*24.— Appointment of manager by a tribunal.*

...

*(2) The appropriate tribunal may only make an order under this section in the following circumstances, namely—*

...

*(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.*

13. In the notice served pursuant to section 22 of the 1987 Act, the Applicants make numerous allegations including that the Respondents are in breach of the RICS Code of Practice (“the RICS Code”) which is approved by the Secretary of State under section 87 under the Leasehold Reform, Housing and Urban Development Act 1993.
14. The Respondents who oppose this application state that “the basics have been covered” and they have clearly been attempting to do what they can. However, they accept that they have not been managing the Property in accordance with the RICS Code.
15. For example, with the exception of a period of approximately one year during which managing agents were appointed, no fire risk assessments have been carried out for over 10 years and the statutory consultation process pursuant to the Landlord and Tenant Act 1985 has not been complied with when undertaking major works. The Respondents who oppose this application explained that they are unfamiliar with the RICS Code.
16. We are satisfied on the balance of probabilities that the RICS code has not been complied with and that grounds for appointing a manager therefore exist.

***Whether it is just and convenient to appoint a manager***

17. The Respondents who oppose this application were not at the time of the hearing opposed to the appointment of a managing agent to manage the Property. They did not, however, want the Tribunal to appoint a manager. They were still hopeful that the parties would be able to instruct a managing agent by agreement and Mr Yannis Mendez explained that they wished to retain the freedom to choose whether to continue with or to dis-instruct a managing agent. Mr Niccolini expressed the hope that all parties would be willing to compromise.
18. The Tribunal heard evidence that the parties had difficulty in agreeing the instructions to be given to managing agents during the period when managing agents were in fact instructed. It is clear to the Tribunal that relations between the parties to these proceedings have broken down and that areas of dispute, for example concerning the payment of electricity bills, have proved impossible to amicably resolve. It is common ground that no comprehensive internal redecoration of the common areas has been carried out for around 18 years.
19. We find that it is unlikely on the balance of probabilities that, in the absence of an order appointing a manager, the parties will reach an agreement within a reasonable period of time concerning who to appoint as managing agents; concerning the instructions to be given to any

proposed managing agents; and concerning the period of time for which any proposed managing agents should remain instructed.

20. In our view, it is important that a property manager remains in place for a sufficient long period of time to enable the outstanding major works to be completed without putting undue financial strain on the lessees.
21. Having regard to all of the matters set out above, the Tribunal finds that it is just and convenient to make a Management Order.

### ***Whether the proposed manager is a suitable appointee***

22. Mr Bird was carefully questioned by the Tribunal and by the parties. He stressed that he would seek to act independently and impartially and that, if appointed Manager, his overriding duty will be to the Tribunal and not any party to these proceedings. He proposed a 5 year appointment in order that the cost of the proposed major works can be spread over a number of years.
23. The Tribunal is satisfied that Mr Bird has suitable qualifications and relevant experience; that he understands what will be involved in managing the Property; and that he has the skills and resources to take on the role of Manager.
24. In all the circumstances, the Tribunal is satisfied that Mr Bird is a suitable appointee.

### ***The terms of the management order***

25. The terms of the Management Order set out below were considered line by line by Mr Bird together with the Tribunal and the parties. Mr Bird confirmed to the Tribunal that he would be happy to manage the Property in accordance with these terms.
26. The Tribunal has been provided with a copy of a specimen lease. The leases of the five flats at the Property do not contain comprehensive service charge provisions and all parties agree that the wording of the leases is unsatisfactory. The Tribunal cannot give advice and the parties should seek independent legal advice concerning any action which may be open to them to remedy this situation.
27. Clause 3(3) of the specimen lease provides (emphasis supplied):

*“3. THE Lessee with the intent to bind so far as may be the Flat and all persons who shall for the time being be the owner of any estate or interest in or the occupier of the Flat (but save as hereinafter provided not so as to be personally liable under this clause after the Lessee shall have parted with all the Lessee’s estate and interest in the Flat) hereby*

*jointly and severally covenants with the Landlords and as separate covenants with each of the lessees of any other Flat forming part of the building (all of whom the landlords and the said lessees hereinafter collectively called “the Covenantees”) for the benefit and protection of the property respectively vested in the Covenantees and each and every part thereof that the lessee will from time to time and at all times hereafter:-*

...  
*(4) Contribute and pay to such one or more of the Covenantees as shall incur the costs and expenses hereinafter mentioned nineteen per centum **of the costs and expenses incurred in keeping in substantial order and condition** pursuant to the provisions in that behalf contained or to be contained in the Leases of the other flats forming part of the building or in the hereinbefore recited Deed of Covenant such of the following parts of the building as do not form part of the Flat that is to say **all roofs roof rafters chimney stacks gutters rain water pipes foundations boundaries and fences and the forecourt to the said property and such of the following as are enjoyed or used in connection with two or more of the flats forming part of the building namely gas and water pipes drains and electric cables and wires stairs and staircases entrance passages and landings...**”*

28. Mr Bird will be entitled to recover, as a service charge, the relevant lease percentage of any sums which each lessee would be liable to pay to the Covenantees in accordance with clause 3 of the lease (“the Clause 3 Charges”).
29. Mr Bird’s basic management fees are £180+ VAT per unit, increasing in line with RPI. The Tribunal is not satisfied that there is any provision in the leases requiring the lessees to pay managing agents’ fees. In the absence of any such provision, we are not satisfied that the management fees for each unit should be added together and then paid in accordance with the lease percentages. The time spent by the Manager in dealing with queries from lessees will not necessarily be referable to the size of each flat. In the circumstances of this case, we find that the basic management fee for each flat should be paid by the lessee of each flat.

### ***Refund of fees***

30. At the end of the hearing, Mrs Chotai applied for an order under section 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 requiring the Respondents to reimburse the Tribunal fees paid by the Applicants. Following some discussion, it became apparent that her proposal was that, of the £300 paid in respect of Tribunal fees, Mr Sandor and each of the Respondents, including Mrs Chotai, should pay £60 each.
31. The Applicants have been successful in their application and all parties are likely to benefit from having the Property professionally managed. The Tribunal finds that it is fair and just to make an order in the terms

proposed. Accordingly, of the Tribunal fees paid by the Applicants in the sum of £300, Miriam Frances Lovelace, Anita Anna Holt and Lapo Niccolini are each ordered to reimburse the Applicants the sum of £60 (leaving the Applicants to contribute £60 each).

### **MANAGEMENT ORDER**

1. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (“the Act”) Mr Phil Bird BSc (Hons) PGDipSurv MIRPM AssocRICS is appointed as Manager of 21 Cheniston Gardens, London W8 6TG (“the Property”).
2. The appointment shall start on date **5 November 2021** (“the start date”) and shall end on **4 November 2026** (“the end date”).
3. 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 Leasehold Reform Housing and Urban Development Act 1993.
4. The Manager must perform his duties under this Order independently, and has an overriding duty to this Tribunal.
5. The Manager shall operate a complaints procedure in accordance with, or substantially similar to, the requirements of the Royal Institution of Chartered Surveyors.
6. During the period of the appointment the Manager must hold appropriate professional indemnity insurance cover of at least £1,000,000.
7. Within **14 days** from the date of this Order the Respondents shall transfer to the Manager:
  - (a) all accounts, books and records relating to the Property including a complete record of all unpaid service charges; and
  - (b) all funds relating to the Property including uncommitted service charges and any monies standing to the credit of any reserve or sinking fund.
8. The Manager shall register this Order against the registered title to the Property in accordance with section 24(8) of the Act.
9. The Manager is entitled to apply to the Tribunal for further directions.
10. 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.



11. Any application to extend or renew this Order should be made at least 3 months before the end date and must include a report of the management of the property during the period of the appointment to the date of the application.
12. The Manager is granted the following functions and owes the following duties relating to the management of the Property.

## **Functions and Duties**

### **Insurance**

1. The Manager must maintain appropriate building insurance for the Property and ensure that the Manager's interest is noted on the insurance policy.

### **Ground Rent and Service charge**

2. The Manager shall not collect the ground rents, if any, payable under the residential leases.
3. The Manager shall collect all Clause 3 Charges (defined above) and insurance premium contributions payable under the residential leases, in accordance with the terms and mechanisms in the leases (save that the arbitration clauses shall not apply, the lessees having the protection of the Landlord and Tenant Act 1985), and shall prepare annual service charge budget and accounts, and distribute them to lessees.
4. To ensure that the Manager has adequate funds to manage the Property the Manager may **14 days** from the date of this Order collect a total sum of £4,000 from the lessees. The lessees shall contribute to this sum in accordance with their lease percentages.
5. Within **14 days** of receiving both copies of the relevant past electricity bills and a demand from the Manager, Anita Chotai shall pay the Manager her share of these past electricity bills.
6. All monies received by the Manger in respect of the Property shall be held in a designated trust account.
7. The Manager has the right to enforce payment of the service charge and may instruct solicitors to recover unpaid service charges and any other monies due in respect of management of the Property, including where liability arises prior to his appointment.

### **Contracts and Litigation**

8. Rights and liabilities arising under contracts to which the Manager is not a party but which are relevant to the management of the Property are to become rights and liabilities of the Manager;
9. The rights and liabilities of the parties under any contract of insurance for the Property or for the provision of goods or services to the Property shall become the rights and liabilities of the Manger from the start date.

10. The Manager may place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property.
11. The Manager may prosecute or defend Court or Tribunal proceedings relating to the management of the Property (whether contractual or tortious) and may continue to prosecute or defend proceedings commenced during the appointment after the end date.

### **Repairs and maintenance**

12. The Manager shall, subject to receiving sufficient prior funds, carry out all required repair and maintenance work relating to the Property, having regard to the covenants in the residential leases, including instructing contractors to attend and rectify problems, and is entitled to recover the cost of doing so as service charge payable under the residential leases.
13. The Manager shall by **10 December 2021** draw up a planned maintenance programme for the period of the appointment allowing for the periodic re-decoration and repair of the exterior and interior common parts of the Property and shall send a copy to every lessee and to the respondents.

### **Licences to assign, approvals and pre-contract enquiries**

14. The Manager shall be responsible for carrying out those functions in residential leases with regard to approvals and permissions, including those for sublettings, assignments, alterations and improvements, that the lease provides should be carried out by the Respondents.
15. The Manager shall be responsible for responding to pre-contract enquiries regarding the sale of a residential flat.

### **Remuneration**

16. The residential lessees are responsible for payment of the Managers' fees which are payable under the provisions of this Order.
17. The lessee(s) of each flat at the Property shall pay a management fee of £180+VAT per annum for the first year of the manager's appointment quarterly in advance on or before **5 November 2021, 5 February 2022, 5 May 2022, 5 August 2022**. This fee is payable per flat for performing the duties set out in paragraph 3.4 of the RICS Code (so far as applicable) and any other duties specified by Mr Bird as being within his basic management fee. In subsequent years of the Manager's appointment, the fee will increase in line with RPI but shall remain payable quarterly in advance on the same dates of the year.
18. The basic management fee includes the following:
  - Produce an annual service charge budget
  - Produce a reserve fund forecast (updated annually)
  - Produce service specifications and tender services regularly

- Collect service charge payments
- Administer all credit control & debt collection
- Maintain a designated client bank account for the development
- Review, authorisation and payment of all contractor and supplier invoices
- Produce monthly financial reports detailing income, expenditure and credit control issues
- Undertake regular site inspections and issue the client with a monthly inspection report.
- Attend regular client meetings
- Arrange insurances
- Attend your Annual General Meeting (if any)
- Manage contractors working on site
- Manage Health & Safety / Fire Risk Assessments
- Ensure compliance with legislation
- Provide an online client portal

**19.** The lessees will also be responsible for paying any of the following additional fees incurred following the date of this order:

<b>Item</b>	<b>£ Exc. VAT</b>	<b>£ Inc. VAT</b>
Pre-Contract Enquiries - 7 day	350	420
Pre-Contract Enquiries - 24 Hour	500	600
Notice of Transfer	100	120
Deed of Covenant	100	120
Arrears Letter 1	75	90
Letter Before Action	125	150
Breach of Covenant Referral Fee	165	198
Major Works Project Management	8%	8%
Section 20 Admin Fee	350	420
Consent Letter	125	150
Tribunal / Court Attendance (Per Hour)	150	180

## **Reporting**

**20.** By no later than one year from the date of this order, 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 and the Respondents at the same time.

### **End of Appointment**

21. 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.
22. The Manager shall also serve copies of the report and accounts on the lessor and lessees, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days.
23. 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.

### **Disputes**

24. In the event of a dispute regarding the payability of a service charge a lessee, or the Manager, is entitled to pursue an application to this Tribunal under section 27A of the Landlord and Tenant Act 1985.
25. In the event of a dispute regarding the payability of any sum payable under this Order, rather than under a residential 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.

**Name:** Judge N Hawkes

**Date:** 22 October 2021

### **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).