



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

Case reference : **MAN/00BM/LAM/2020/0005**

Property : **Riverbank Gardens Apartments, 50
Tottington Road, Bury, BL8 1JY**

Applicants : **1. Mr Robert Franklin
2. Mr Martin Tough
3. Mr Robbie Godfrey
4. Ms Susan Power**

Representative : **Mr Robert Franklin & Mr Martin
Tough (in person/not legally
represented)**

Respondents : **1. Riverbank Gardens (Bury)
Management Company Ltd
2. Morgoed Estates Ltd**

Representative : **Mrs Jane Barlow (director) for 1st
Respondent
No appearance or representation for
2nd Respondent**

Type of application : **Landlord and Tenant Act 1987 –
Section 24 (Appointment of a
Manager)**

Manager to be appointed : **Longden & Cook Real Estate Ltd**

Tribunal member(s) : **Tribunal Judge L. F. McLean
Regional Surveyor Mr N. Walsh**

Date of hearing : **26th October 2022**

Hearing venue : **Manchester Tribunal Hearing Centre,
1st Floor Piccadilly Exchange, 2
Piccadilly Plaza, Manchester M1 4AH**

Date of decision : **3rd November 2022**

DECISION

Decisions of the Tribunal

- (1) Pursuant to Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, Mr Robert Franklin and Mr Martin Tough are removed as applicants in these proceedings.**
- (2) Pursuant to Rule 6(3)(m) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, these proceedings are stayed for a period of 28 days beginning on the date that this decision is sent out from the Tribunal office to the parties.**
- (3) If Mr Robbie Godfrey or Ms Susan Power wishes to continue their participation in these proceedings, each of them must, before the expiry of the stay referred to at paragraph (2):-**
 - a. Communicate their intention to do so by writing to the Tribunal Office at 1st Floor Piccadilly Exchange, 2 Piccadilly Plaza, Manchester M1 4AH or by email to rpnorthern@justice.gov.uk (quoting case reference MAN/00BM/LAM/2020/0005); and**
 - b. When so corresponding,**
 - i. Confirm whether they wish to adopt the existing written statements of case of Mr Robert Franklin as their own; and**
 - ii. Explain whether (and if so, why) they think the Tribunal has power to dispense with service of the Section 22 Notice upon Morgoed Estates Ltd in**

accordance with the criteria set out in Section 22(3) of the Landlord and Tenant Act 1987.

- (4) If neither Mr Robbie Godfrey nor Ms Susan Power complies fully with paragraph (3), then (subject to paragraph (5) below) these proceedings shall stand struck out under Rule 9(3)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 without further order.**
- (5) In accordance with Rule 9(4) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, Mr Robbie Godfrey and Ms Susan Power may write to the Tribunal explaining why the proceedings should not be struck out under Rule 9(3)(b), and if such representations are received by the Tribunal before the expiry of the stay of proceedings then paragraph (4) shall not take effect and the representations will be considered by the Tribunal before deciding what further order to make.**
- (6) If either Mr Robbie Godfrey or Ms Susan Power complies with paragraph (3), then upon expiry of the stay the Tribunal shall make such further order as it thinks fit, which may include the removal of either party under Rule 10 if only one party has confirmed their intention to continue, and/or striking out the whole of the proceedings under Rule 9(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.**
- (7) The parties are reminded that in accordance with the standing order of Deputy Regional Judge Holbrook, any correspondence sent to the Tribunal offices by one party must also be copied to all other parties.**

The application

1. The Applicants have applied for an order to appoint a manager pursuant to s.24 of the Landlord and Tenant Act 1987 in respect of Riverbank Garden Apartments, 50 Tottington Road, Bury, BL8 1JY (“the Property”).
2. The application was originally brought by the 1st, 2nd and 3rd Applicants. Ms Susan Power was added as 4th Applicant on 24th May 2021 by order of Deputy Regional Judge Holbrook.

Background

3. The Applicants are all long leaseholders of residential flats within the Property.
4. The 1st Respondent is a management company which was incorporated specifically to undertake the management duties of the Property in accordance with the terms of the leases entered into between Riverbank

Gardens Ltd and the original flat lessees when the scheme was developed. The 1st Respondent is owned by all the lessees of the flats within the Property, each of whom holds one share per flat of which they are leaseholders. The 2nd Respondent is the current landlord of the Property.

5. The Property is a purpose built block of flats over several storeys, the residential parts of which are subdivided into 20 flats.
6. On a date in the autumn/winter of 2019, the 1st, 2nd and 3rd Applicants submitted a Preliminary Notice under s.22 of the Landlord and Tenant Act 1987 to the 1st Respondent. The 1st Respondent appears to concede that it was so served, although the date of service is not readily apparent from the parties' pleadings. It is common ground that the 2nd Respondent was not served with the Preliminary Notice, on the basis that the 2nd Respondent is adopting a neutral stance regarding this dispute. The Applicants have sought dispensation from the requirement for service, pursuant to s.22(3) of the Landlord and Tenant Act 1987, which is discussed later in this decision.
7. The Applicants nominated Longden & Cook Real Estate Ltd (Mr Eli Shalom) to act as appointed manager.
8. On 14th January 2021, the Tribunal issued directions to the parties for the filing and serving of the Applicants' case bundle (including a witness statement from the proposed manager) within 21 days, and the Respondents' case bundle within 21 days thereafter. The Applicants were given permission to file and serve a short reply within 7 days after that.
9. The 1st Applicant submitted a case bundle which was received on 2nd February 2021, which the Tribunal has read.
10. On 22nd February 2021, the 1st Respondent submitted a case bundle in reply, which the Tribunal has read.
11. The 1st Applicant submitted a case bundle in reply on 1st March 2021, which the Tribunal has read.
12. Subsequently, the parties continued to correspond directly with the Tribunal office by email between March 2021 up to the date of the hearing. This included late written updating submissions filed by Mr Robert Franklin, which the Tribunal office had forwarded to the 1st Respondent one or two days before the hearing.

Grounds of the application

13. The Applicants' grounds of the application were not very succinctly particularised and consisted of a lengthy narrative of complaints and grievances between the Applicants and the 1st Respondent stretching back over several years. In summary, the crux of the dispute appeared to centre on the following issues:-

- a. The practice of the 1st Respondent to pay Mrs Jane Barlow (managing director and shareholder of the 1st Respondent, and a non-resident leaseholder of the Property) a property management retainer of some £4000 per annum and in particular whether this resulted in the leaseholders paying “unreasonable” service charges.
- b. The 1st Respondent’s use of a third party company, Lyme View Properties Ltd (which was co-owned and co-directed by Mrs Jane Barlow and her husband Mr Doug Barlow), as a form of payroll facilitator for Mrs Barlow’s aforesaid retainer. This, and some rather poorly worded and self-contradictory correspondence from Mrs Barlow, had caused a significant degree of confusion as to whether Lyme View Properties Ltd was or was not providing management services in its own right (and, if it was not, whether it was appropriate for it to be submitting invoices for her services instead of Mrs Barlow receiving payments directly to her own bank account).
- c. The 1st Respondent’s practice of retaining Mr Doug Barlow to provide accountancy services to the 1st Respondent and in particular whether this resulted in the leaseholders paying “unreasonable” service charges.
- d. The 1st Respondent’s practice of retaining Mr Phil Cheetham (director of the 1st Respondent) to provide general property maintenance services and in particular whether this resulted in the leaseholders paying “unreasonable” service charges.
- e. Whether the 1st Respondent had failed to comply with the obligations under the residential leases in respect of the management of the Property.
- f. Whether the 1st Respondent and / or their recently appointed agents had demanded excessive administration charges in relation to late payments.

Issues

14. The Tribunal had to determine the following issues:-
 - a. Any preliminary procedural matters arising from the prior conduct of the proceedings;
 - b. Whether the Tribunal has jurisdiction to consider the application;
 - c. Whether it is just and convenient to appoint a manager and, if so, who that person should be and on what terms.

Relevant Law

15. The relevant provisions of the Landlord and Tenant Act 1987 read as follows:-

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.

[...]

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, and
- (ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.

(2) A notice under this section must—

- (a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which any person on whom the notice is served may serve notices, including notices in proceedings, on him in connection with this Part;
- (b) state that the tenant intends to make an application for an order under section 24 to be made by the appropriate tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with;
- (c) specify the grounds on which the tribunal would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;
- (d) where those matters are capable of being remedied by [F14any person on whom the notice is served, require him], within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and
- (e) contain such information (if any) as the Secretary of State may by regulations prescribe.

(3) The appropriate tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

(4) In a case where—

- (a) a notice under this section has been served on the landlord, and
- (b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage, the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.

23 Application to court for appointment of manager.

(1) No application for an order under section 24 shall be made to the appropriate tribunal unless—

- (a) in a case where a notice has been served under section 22, either—

- (i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the person required to take steps in pursuance of that paragraph having taken them, or
 - (ii) that paragraph was not applicable in the circumstances of the case; or
- (b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either—
 - (i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or
 - (ii) no direction was given by the tribunal when making the order.

24 Appointment of manager by a tribunal.

- (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
 - [...]
 - (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 or prohibited 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.

[...]

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

- (a) if the amount is unreasonable having regard to the items for which it is payable,
 - (b) if the items for which it is payable are of an unnecessarily high standard, or
 - (c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.
- In that provision and this subsection “service charge” means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

[...]

(3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4) An order under this section may make provision with respect to—

- (a) such matters relating to the exercise by the manager of his functions under the order, and
- (b) such incidental or ancillary matters, as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide—

- (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
- (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
- (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
- (d) for the manager’s functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.

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

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

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

[...]

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

The Hearing

16. The hearing was held at the Manchester Tribunal Centre at 10.30am on 26th October 2022. The 1st and 2nd Applicants appeared in person. There was no appearance or other representation for the 3rd or 4th Applicants. The 1st Respondent was represented by one of its directors, Mrs Jane Barlow. She was accompanied by Mr Doug Barlow (witness) and Mr Chris Browne who was a representative of Horizon Block Management Ltd (the newly appointed managing agents retained by the 1st Respondent). There was no appearance or representation for the 2nd Respondent.
17. A preliminary procedural issue arose from the contents of an email which was sent by Mrs Jane Barlow to the Tribunal on 11th May 2022, which enclosed copies of two County Court Judgments – these concerned claim nos. 226MC488 and 226MC495 in the County Court at Manchester. Claim no. 226MC488 was between Riverbank Gardens (Bury) Management Company Ltd and Mr Robert Franklin; and Claim no. 226MC495 was between Riverbank Gardens (Bury) Management Company Ltd and Mr Martin Tough; each relating to claims for unpaid service charges. Each CCJ contained a recital by Deputy District Judge McDonald sitting in the County Court at Manchester on 4th February 2022, whereby the Judge recorded that each claim had been compromised between the parties on terms, with liberty to apply if the agreement(s) was/were breached. Each recital contained similar wording recording the terms of the agreement i.e.:-

And upon the Parties reaching an agreement that:

[a] The Claimant will withdraw claim [...] with no Order as to costs

[b] The Defendant will withdraw his proceedings in the First Tier

Property Chamber Residential Property [Case no. MAN

00BM/LAM/2020/0005] with no Order as to costs & will not issue

*any further proceedings prior to **01 January 2023***

18. It was common ground that the 1st Respondent had complied with paragraph [a] of the recital in each case and withdrawn its claims in the County Court, but that the Applicants had sought to continue the current Tribunal proceedings.
19. Mrs Jane Barlow objected to the continued participation of the 1st and 2nd Applicants as she said that this was a breach of their agreement reached on 4th February 2022. She confirmed that she wished them to be removed as applicants pursuant to Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
20. The 1st and 2nd Applicants disagreed. They said that it had been a condition of the agreement of 4th February 2022 that they had to be able to secure the consent of all four applicants to withdraw the current Tribunal proceedings, which they said had not been forthcoming. They said that this was communicated to Deputy District Judge McDonald and to the 1st Respondent. The email to the Deputy District Judge, sent on 11th February 2022, was contained in the 1st Applicant's supplemental bundle of late written submissions – the Tribunal decided to give consideration to that sole document within the bundle, in order to determine this particular issue fairly.
21. Mrs Jane Barlow also explained that she had reached a compromise of the current Tribunal proceedings with Ms Susan Power in November 2021 as part of a similar County Court claim for non-payment of service charges. However, there was no other evidence of that agreement which could be put before the Tribunal and Mrs Barlow conceded that the agreement had not been recorded in the recital to the judgment in that instance.
22. Mrs Jane Barlow also explained that she had received an email from Mr Robbie Godfrey saying that he no longer wished to participate in the current Tribunal proceedings. The Tribunal observed that he had not communicated any such intention to the Tribunal himself.
23. As a side note, after the hearing concluded the Tribunal officers subsequently discovered an email from Mr Godfrey to the Northern Region office, dated 3rd June 2021, in which he asked to have his “name removed” from the proceedings, and which had not been shown to the members of the Tribunal panel before or during the course of the hearing. Due to an administrative omission, no action was taken by the Tribunal officers regarding that request. Aside from that, there was no other communication from Mr Godfrey as to whether he did or did not wish to remain a participant in proceedings.
24. The 1st and 2nd Applicants took issue with Mrs Barlow's assertions regarding the 3rd and 4th Applicants. They said that each of the other applicants had paid them a contribution towards the fees of the proceedings, and that this demonstrated their intention to continue. Again, however, there was no other evidence which could be put before the Tribunal in that regard.

25. The Tribunal expressed its concern that if the 1st and 2nd Applicants had agreed to compromise their application in the current Tribunal proceedings in a contractually binding agreement to settle their respective County Court claims, then it would be an abuse of process to allow them to continue to prosecute the current application.
26. What emerged from detailed questioning of the parties was that the two sides have different recollections of exactly what was agreed and how, on the crucial issue of whether the consent of all of the applicants to withdrawing the current Tribunal proceedings was needed in order for the agreement to be binding on the 1st and 2nd Applicants. Mr Franklin struggled to explain why that condition did not appear in the recital, other than to suggest that the Deputy District Judge had simply omitted to write it down. Mrs Barlow was confident that the written recital was an accurate and contemporaneous note of the agreement reached, although she conceded that she struggled to recall all of the details due to the passage of time. Mr Franklin asserted that he had been prepared for the 1st Respondent to revive the original claim against him on the grounds that the settlement had not taken effect, and both he and Mr Tough raised a concern that they thought that they were in fact already being pursued again for sums that were owed in those earlier proceedings. It was also suggested that Mr Cheetham had not resigned from being a director as had been promised.
27. It is regrettable that the parties did not take the time to record the finer details of their agreement in writing on the 4th February 2022. In the absence of a clear written agreement that all parties had personally signed, the Tribunal was required to reach its own conclusions based on all of the evidence available. The Tribunal retired to consider the oral evidence of Mrs Jane Barlow, Mr Doug Barlow, Mr Robert Franklin and Mr Martin Tough; and also had regard to the terms of the recitals of Deputy District Judge McDonald and the content and purpose of the subsequent correspondence; and then resumed the hearing so that its decision could be delivered to the parties on this issue.
28. On the balance of probabilities, the Tribunal finds that it was not a condition of the 1st and 2nd Applicants' settlement agreements that the consent of all of the applicants to withdrawing the current Tribunal proceedings was needed in order for the agreement to be binding on them. In reaching this conclusion, the Tribunal particularly bore in mind the following issues:-
- a. It would have been odd for such an agreement to have been reached so as to involve the consent of persons who were not party to the claims, and it is more likely that this was a mere statement of intent or aspiration rather than a condition precedent;
 - b. The only contemporaneous written record of the agreement was that of DDJ McDonald, which made no mention of such a condition;
 - c. Mrs Barlow acted upon the agreement as she understood it and arranged for the claims to be withdrawn before the consent of the other

applicants in the current Tribunal proceedings had been obtained, which would have been an unwise course of action if such consent was necessary;

- d. The status of the consent as a condition precedent is not supported by the wording of Mr Franklin's email to the Judge;
 - e. Mr Franklin refers to the issue of consent in his email to Mrs Barlow but it is only mentioned in passing.
29. Accordingly, the Tribunal finds that the 1st and 2nd Applicants agreed to withdraw their applications in the current Tribunal proceedings. If there have been any ancillary breaches of that agreement, then that is a matter for the parties to take up in the County Court, but insofar as this application is concerned, the Tribunal determined that it was appropriate to remove the 1st and 2nd Applicants as parties to the application in order to give effect to the agreement reached.

Stay of proceedings and subsequent steps

30. The Tribunal noted that the 3rd and 4th Applicants had failed to appear and that there was a dispute as to whether they still wished to continue the case. Because of that, and for reasons discussed below, it was not possible for the Tribunal to determine all the issues in dispute at the hearing.
31. The Tribunal determined that it was appropriate to stay the proceedings to give the 3rd and 4th Applicants the opportunity to confirm whether they wished to continue or not. If either of them does not reply then the Tribunal may decide to remove one or other of them as parties to the application. In particular, the Tribunal proposes to treat Mr Godfrey's email of 3rd June 2021 as a request to be removed as a party to the application, unless following receipt of this decision he communicates to the Tribunal office his desire to remain an applicant. If neither replies, then the Tribunal will strike out the application. The 1st Respondent may, if it wishes, draw the Tribunal's attention to any issues which might affect the standing of either the 3rd or 4th Applicant to remain a party to the proceedings.
32. If either or both of the 3rd/4th Applicants does reply and wishes to continue the application, they must also assist the Tribunal with two other issues regarding the conduct of the proceedings.
33. The first of these is a housekeeping issue in that the 3rd and/or 4th Applicants must confirm whether they wish to adopt the existing written statements of case of Mr Robert Franklin as their own. If they do not, then the Tribunal will consider what directions are appropriate.
34. The second and more important of these is whether the Tribunal has jurisdiction to grant the application at all. Rule 9(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 is clear that the Tribunal must strike out an application if it lacks jurisdiction, that is to say if the statute does not authorise the Tribunal to consider or grant

the application in question in the circumstances. That Rule applies irrespective of whether or not the parties want it to – it cannot be waived by agreement and the Tribunal has no inherent power to override it. The parties (including Morgoed Estates Ltd) are reminded that s.22 of the Landlord and Tenant Act 1922 requires that notice must have been given to the landlord and that dispensation from that requirement can only be granted where the Tribunal “*is satisfied that it would not be reasonably practicable to serve such a notice*” on the person in question. The Tribunal particularly notes that it is insufficient that the person or company who has not been served is disinterested in the eventual outcome of the application. If a management order is made, it is likely to be binding on the landlord and its successors in title and so there is good reason for the statute making service on the landlord compulsory, even when the landlord has divested itself of any management responsibility under the leases. The Tribunal must also have regard to the public purse when deciding whether it can or should make a management order, as the manager is a statutory appointment of the Tribunal and this carries ongoing legal consequences. The Tribunal accordingly invites the 3rd and 4th Applicants to explain whether they think dispensation can be granted and, if so, on what basis.

Other considerations

35. In the event that this application is able to proceed, the Tribunal takes this opportunity, without pre-judging the outcome of the case, to set out its expectations regarding the future conduct of the case in any event.
36. Firstly, there is the actual identity of the proposed manager. Although the issue was not raised by Deputy Regional Judge Holbrook, the Tribunal has more recently adopted a Practice Statement issued by the Chamber President, a copy of which is attached to this decision. The Applicants are invited to study this carefully and consider in particular what criteria the Tribunal will apply when deciding whether the proposed manager is suitable for appointment (who should usually be a named individual rather than a firm or company, even if they draw upon their employer’s or firm’s resources to discharge their duties). If this application is able to proceed, then the Tribunal would normally expect the proposed manager to attend a hearing in person to be interviewed by the Tribunal members so that the Tribunal can be satisfied that the proposed manager is competent to discharge the duties and understands the nature of the responsibility they are agreeing to take on.
37. Secondly, the Tribunal also reminds the parties that a management order is not made lightly as it amounts to an ongoing interference by a public body in the private contractual affairs of ordinary citizens. When deciding whether to make a management order, the Tribunal will ordinarily expect to see evidence of incompetence in relation to the current discharge of management arrangements (rather than mere dissatisfaction), but will also be focused on what the prospects are for the future management of the block as to whether a Tribunal-appointed manager is needed. It will

assist the Tribunal if the parties are able to ensure that their submissions are focused with those issues in mind.

Name:
Tribunal Judge L. F. McLean
Regional Surveyor Mr N. Walsh

Date: 3rd November 2022

Rights of appeal

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).