10885

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AW/LAM/2014/0018**
Property	:	**135 Ladbroke Grove, London W11 1PN**
Applicants	:	**Ms S Lodge (Flat 1), Ms P Davda and Mr K Heksel (Flat 2) and Ms S Arora (Flat 3)**
Representative	:	**Mr J Bates, Counsel**
Respondent	:	**Queensbridge Investments Limited**
Representative	:	**Miss S Tozer, Counsel**
Type of Application	:	**For the determination of an application for the appointment of a manager**
Also present	:	**Ms J Northover (Applicants' solicitor), Ms A Mooney (Applicants' proposed manager) (first day only), Mr J Davies (Respondent's proposed manager) (second day only) and Ms S Erkman (non-practising legal adviser to Respondent) (second day only)**
Tribunal Members	:	**Judge P Korn (chairman)** **Mr S Mason FRICS** **Mrs J Dalal**
Date and venue of Hearing	:	**6th January and 24th March 2015 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**30th April 2015**

DECISION

Decisions of the Tribunal

(1) The preliminary notice required by section 22 of the Landlord and Tenant Act 1987 (the "**1987 Act**") was served on the Respondent before the application for an order under section 24 of the 1987 Act was made.

(2) The Tribunal is satisfied that it is just and equitable to appoint Ms Alison Mooney as manager of the Property for a period of 2 years.

(3) The order made by the Tribunal is set out in Appendix 2 to this decision.

(4) We hereby makes an order under section 20C of the Landlord and Tenant Act 1985 that all of the costs incurred by the Respondent in connection with the proceedings before the Tribunal in this case are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the Applicants.

The application

1. The Applicants seek the appointment of a manager over the Property pursuant to section 24 of the 1987 Act.

2. The Property consists of three residential flats on the first, second and third floors and a commercial unit on the ground and lower ground floors. The relevant legal provisions are set out in Appendix 1 to this decision.

Preliminary issue

3. Before dealing with the substantive issue of whether we should order the appointment of a manager, it is necessary first to deal with the question of whether a notice complying with section 22 of the 1987 Act was served on the landlord (and any other relevant person) prior to the making of the application for the appointment of a manager, as required by section 22 subject to the provisions of sub-section 22(3).

4. In this regard an initial question arose as to whether Ms Northover, the Applicants' solicitor, could give evidence in relation to the service of the notice. Miss Tozer for the Respondent objected that Ms Northover should not be able to give evidence as she had not given a witness statement and a representative of the Respondent was not in attendance to rebut her evidence. On hearing both parties on this point we determined that Ms Northover would be allowed to give evidence on this point. The Respondent had not formally raised the section 22 issue in writing until 30th December 2014 and its submissions were not seen by the Applicants' solicitors until 2nd January 2015, which left just one working day between the date of receipt and the date of the hearing. In addition, Ms Tekman of the Respondent had known about the date of the hearing since at least early November and therefore should in principle have been able to make arrangements to attend. Also, the Respondent could have raised the section 22

issue much earlier but either chose not to do so or overlooked the point until the last moment.

5. The Respondent confined itself to arguing that the section 22 notice had not been served on the Respondent itself. It was not seeking to argue that the notice should have been served on any other person in addition to the Respondent.

6. Ms Northover gave oral evidence that a section 22 notice was sent by first class post on 18th September 2013 to the Respondent c/o Bingham & Elliott at 14 Milner Street, London SW3 2PU and not returned. Another section 22 notice was sent by first class post on the same date to the Respondent at Portman House, Hue Street, St Helier JE4 5RP and not returned. Another section 22 notice was sent by first class post on the same date to the Respondent c/o 67 Grosvenor Street, London W1X 9DB and not returned.

7. In cross-examination, Miss Tozer put it to Ms Northover that Ms Tekman of the Respondent had denied that the Respondent had received the section 22 notice. Miss Tozer said that the Milner Street address was the address of a former managing agent. As for the Grosvenor Street address, this was the address noted on the Land Registry register but that only made it valid for service by the Land Registrar as it was merely the former address of the Respondent's solicitors, and in any event in her submission a firm of solicitors is not an authorised agent unless expressly held out as such. As regards the St Helier address, this was indeed the Respondent's registered office address, but in Miss Tozer's submission the omission of the word "Jersey" from the address meant that it was not "properly addressed" for the purposes of section 7 of the Interpretation Act 1978.

8. Miss Tozer also said that if the Applicants were relying on sub-section 196(3) of the Law of Property Act 1925 this did not help them because the Milner Street and Grosvenor Street addresses were not the Respondent's "last-known place of abode or business" and the St Helier address was not "in the United Kingdom".

9. Miss Tozer also questioned Ms Northover about the procedure for sending out post in her office and how she could be so sure that the letters had actually been posted.

10. Mr Bates submitted that the Tribunal could be satisfied on the balance of probabilities that at least one of the letters was actually received by the Respondent. He also argued that it could not be said in the absence of any legal authority that the absence of the word Jersey from the St Helier letter was fatal. He also noted that Ms Tekman for the Respondent had not made herself available for cross-examination and commented that therefore her witness evidence could not properly be tested.

11. In our view, section 196 of the Law of Property Act 1925 is not relevant to this preliminary issue as that section governs notices required or authorised to be served or given by the Law of Property Act 1925. A section 22 notice is not required or authorised to be served or given by the Law of Property Act 1925 but rather by the Landlord and Tenant Act 1987. In our view the relevant provision is section 7 of the Interpretation Act 1978, which reads as follows:

"Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the "expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

12. On the basis of the evidence, we accept on the balance of probabilities that all three letters were actually sent. However, in the case of the letter sent to the Milner Street address and the letter sent to the Grosvenor Street address in our view these were not "properly addressed" for the purposes of section 7 of the Interpretation Act 1978 above. The evidence indicates that the Milner Street address was the address of a former managing agent and therefore was neither sent to the Respondent nor to its authorised (or at least ostensibly authorised) agent. As for the Grosvenor Street address, the evidence indicates that this was merely the former address of the Respondent's solicitors and therefore again was not properly addressed. There is also the additional point that a firm of solicitors is arguably not an authorised agent for these purposes unless the other party is expressly notified that it is so authorised.

13. As regards the St Helier address, it is accepted by the Respondent that this is its correct address for the purpose of service of notices. Miss Tozer's argument was that the letter was not properly addressed because it did not include the word "Jersey". We do not accept this argument. The address used was Portman House, Hue Street, St Helier JE4 5RP. As it includes the correct postcode, the omission of the word "Jersey" (if it constitutes an omission at all) would not have caused the postal service any difficulty or confusion and in our view is not material for the purposes of establishing whether the letter was properly addressed. Whilst the analogy is not exact, we do not think that anyone would seriously argue that a letter sent to an address in Cardiff (including the correct postcode) would be improperly addressed merely because the word "Wales" was not also used. Therefore we consider that service of the section 22 notice sent to the St Helier address can be deemed to have been effected before the section 24 application was made.

14. Section 7 of the Interpretation Act 1978 deals with the question of when a notice can be deemed to have been served, but there is also the separate question of whether the evidence indicates that the section 22 notice was actually received. As stated above, on the basis of the evidence, we accept on the balance of probabilities that all three letters were actually sent. Furthermore, one was sent to the correct address and the other two were sent to addresses from which there is a reasonable chance that they were forwarded on to the correct address. Ms Tekman has given written evidence that the Respondent did not receive them, but she did not make herself available to be cross-examined on that evidence. Whilst the position is not clear-cut, bearing in mind that there is no evidence that any of the letters were returned to the sender our view on the balance of probabilities is that at least one of the three letters was actually received by the Respondent.

15. In conclusion, we determine that the section 22 notice was in fact received by the Respondent prior to the making of the section 24 application and that in addition

the section 22 notice sent to the St Helier address is deemed to have been served on the Respondent under section 7 of the Interpretation Act 1978.

Applicants' case on main issues

16. Mr Bates set out the background to the application. There had been a service charge dispute which came before the First-tier Tribunal in January 2006 after a compromise was reached on the substantive issues. In the 2006 decision the First-tier Tribunal stated that there was some evidence of poor management. According to Ms Lodge's witness evidence, following that case the Respondent agreed to appoint Urang as new managing agents in the hope that the Property would as a result be properly managed, and in response the then leaseholders decided not to pursue their application for the appointment of a manager at that time. However, matters did not proceed as the leaseholders had hoped, and in Ms Lodge's view a major factor in this was Urang's failure to obtain proper instructions from the Respondent despite – at least initially – making substantial efforts to do so.

17. The section 22 notice itself is dated 18th September 2013, was served on behalf of all of the residential tenants and lists the Applicants' various concerns. In particular it lists various alleged breaches of repairing covenant and health and safety concerns, states that the Respondent has made unreasonable service charge apportionments and is in breach of the RICS Code of Practice and sets out other circumstances which it is argued make it just and convenient to appoint a manager.

18. The hearing bundle includes a report dated 11th November 2010 from Pole Structural Engineers detailing certain structural problems with the Property, which in part Pole describe as possibly dangerous and in part as quite alarming. There is a further report dated 16th December 2010 from Michael Chester & Partners Consulting Civil and Structural Engineers in which various remedial works are recommended.

19. There is also a Fire, Health and Safety Review dated May 2013 which was undertaken by Quadriga Health and Safety Ltd and which lists a number of significant high priority fire, health and safety issues. According to the report's conclusion some of these issues *"put the residents, their visitors and the visiting emergency services at risk of death or serious injury"*. Smoke detectors were found not to be working and there were no fire extinguishers within the common parts. There was a problem with the fire exit door and with the emergency lighting. There was a concern that children would be able to gain access to the roof from the sash window.

20. Mr Bates also commented on the Applicants' apparent difficulties in getting hold of building insurance details, referring the Tribunal to a chasing email dated 12th November 2010 from Simon Pugsley to the Respondent. He also referred the Tribunal to letters of complaint from the Applicants to the Respondent in particular one dated 10th June 2011 relating to structural problems with the building.

Mr Heksel's witness evidence

21. Mr Heksel is the joint leaseholder of Flat 2. In his witness statement he gives evidence of water damage, structural problems, health and safety concerns, failure by the Respondent to respond to Urang and difficulties with obtaining a copy of the building insurance policy.

22. In cross-examination Mr Heksel accepted that Urang had embarked on a consultation process to carry out the necessary works, but he did not accept the suggestion that the process stalled because the Applicants were not prepared to pay the cost. What actually happened, said Mr Heksel, was that the Applicants were invited to propose alternative contractors but then – when they did so – Urang were obstructive (whether because of the Respondent or otherwise) and the alternative contractors were unable to quote. The process then gradually ran out of steam. He tried to contact the Respondent but without success. Miss Tozer noted that Ms Tekman in her witness statement said that she and Mr Heksel had spoken on the subject but he denied this.

23. Miss Tozer asked Mr Heksel why the Applicants had waited until September 2013 to serve the section 22 notice if the problems had started a long time before then, and she put it to him that the section 22 notice, being served when it was, would have come as a surprise to the Respondent. In response, Mr Heksel said that the Applicants were all busy people and that they had needed to find the time to meet up and then to instruct solicitors, and this explained the length of time that it had taken. However, both the Respondent and Urang would have been well aware of the problems by then.

Ms Lodge's witness evidence

24. Ms Lodge is the leaseholder of Flat 1. In her witness statement she gives evidence of previous litigation, disrepair, health and safety concerns and failure by the Respondent to communicate and to provide building insurance details.

25. In cross-examination she accepted that in the previous First-tier Tribunal decision she was ordered to pay a service charge for the first 3 years, and Miss Tozer put it to her that the First-tier Tribunal must therefore have been satisfied that some services were being provided. Miss Tozer also put it to her that the reason why the Respondent had not been very active recently was that there was an agreement whereby the Applicants and Urang would sort things out between them. Ms Lodge did not recall any such agreement.

26. Ms Lodge said that she has being paying the ground rent and had been paying all service charges until May 2014 when it became unclear how much was owed. Generally, she had relied on others to lead the process and had personally found it all very confusing, but her understanding was that the other leaseholders had now lost confidence in Urang's ability to manage the Property.

Ms Arora's witness evidence

27. Ms Arora is the leaseholder of Flat 3. In her witness statement she gives evidence of disrepair and failure by the Respondent to communicate and to provide building insurance details.

28. In cross-examination, Miss Tozer suggested that the necessary works were not pursued because the Applicants could not afford to pay the service charge, which Ms Arora denied. As regards communication, Miss Tozer referred her to an occasion on which she received a prompt response from the Respondent, to which she replied that the Respondent had only been in touch a handful of times.

29. Ms Arora said that she had held off paying the service charge for a while but then later resumed paying. She said that her property sale fell through as a direct result of her not being able to obtain a copy of the building insurance policy from the Respondent at the relevant time.

The proposed manager – Ms Alison Mooney

30. The hearing bundle includes details of Ms Mooney's qualifications and experience, as well as her proposed management plan and a draft management order. At the hearing she said that she had been appointed as a manager by the First-tier Tribunal before and that the appointment was going very well. She has extensive experience of mixed-use developments and has had specific experience of managing residential units above a commercial unit.

31. Ms Mooney noted that in her written witness statement Ms Tekman for the Respondent had criticised Ms Mooney's conduct and had described her as being controlled by the Applicants' solicitor. She did not accept this; what had actually happened was that she had agreed to meet Ms Tekman who had then cancelled 2 hours before the scheduled meeting time and had hectored her unpleasantly on the telephone, leaving Ms Mooney no choice but to put the telephone down.

32. Miss Tozer cross-examined Ms Mooney and noted that she had not yet read the lease of the commercial premises. She put it to her that her draft management plan assumed the commercial tenant to have a service charge liability, which was not borne out by the commercial lease. She also questioned Ms Mooney's analysis as to how the service charge should be apportioned between the different units.

33. Ms Mooney considered that a sum of £20,000 to £30,000 would cover the works that were needed initially. Miss Tozer countered that if this was all that was required how could it be argued that there had been a serious failure to manage? Ms Mooney said that this was just the initial outlay for the most urgent issues. This would need to be followed by a properly structured programme at a manageable cost.

34. In response to a question from Miss Tozer she said that although she lived near Leicester she had a London office and most of her portfolio was in London and the

South East. She accepted that she had been put in touch with the Applicants by Ms Lodge's father but she did not feel in any way compromised by this.

35. The Tribunal asked Ms Mooney whether she would have any difficulty in working with the Respondent, particularly given that Urang had seemingly encountered difficulties in contacting the Respondent and that she had put the phone down on Ms Tekman. Ms Mooney replied that, if appointed by the Tribunal, she would not have a problem in working with the Respondent in a professional capacity.

36. In a written update to her evidence dated 30th January 2015 Ms Mooney notes that the commercial lease contains no service charge provisions and goes on to state that the liability for the share of the cost attributable to the ground and lower ground floors would fall on the Respondent. She also expressed the view that it would be fair for the ground and lower ground floors between them to contribute 40% of the total service charge as they accounted for two out of the five floors.

Ms Erkman's witness evidence

37. Ms Erkman is a non-practising legal adviser to, and representative of, the Respondent. In her witness statement she states that Ms Tekman's own witness statement accurately sets out the dealings that Ms Erkman has had with the Applicants, their solicitor and their proposed manager. Ms Tekman's own witness statement is very long and cannot easily be summarised, but it covers her understanding of the background, her comments on the application and the Applicants' evidence, her opinion of the Applicants' proposed manager and various legal points.

38. Ms Erkman said that the Respondent's position was that a manager should not be appointed. The Respondent agreed with leaseholders in a meeting held in late 2005 or early 2006 that Urang should be appointed as managing agents, and nothing has happened subsequently to justify the appointment of a manager. There was a small problem with the flank wall, but the main problem had been the difficulty in getting any money out of the leaseholders. The leaseholders had only paid small amounts to Urang since 2005, and Urang had complained about the leaseholders to the Respondent. The Applicants' complaint about not being able to obtain building insurance details was untrue.

39. Ms Erkman also said that the leaseholders had agreed in 2005/06 and again in 2010/11 that they would between them be entirely responsible for the parts of the building above the ceiling to the ground floor. They had not communicated with the Respondent since September 2007, and the Respondent had no idea why the Applicants were unhappy. She thought that Ms Mooney's suggestion that the commercial unit should bear 40% of the service charges was ridiculous and showed that she was not a suitable person to manage the Property.

40. Ms Erkman also referred the Tribunal to the passage in Ms Tekman's witness statement in which she states that in 2010 and 2011 extensive works were carried out to the external (and internal) structure of the commercial unit by the Respondent at great expense and that no contributions were sought from the residential leaseholders. In her view it was therefore unfair to expect the

Respondent or the commercial tenant to contribute towards the maintenance of the residential parts of the Property. She also said that a lot of money had been spent on the roof by the Respondent and that the Applicants had been using the roof without permission and creating a fire risk.

41. Ms Erkman said that it was agreed prior to the 2006 hearing that the Applicants would between them pay for the repair of the flank wall, and when later asked by the Respondent why the work had not been carried out Urang said that it was because Urang was having problems getting money from leaseholders.

42. In response to cross-examination, Ms Erkman said that it was agreed in 2005/06 that the leaseholders would appoint Urang as managing agents. Mr Bates put it to her that the leaseholders had no power to appoint managing agents. In any event, the statement in Ms Tekman's witness statement that the Respondent would not terminate Urang's services without consultation with the tenants indicated that it was the Respondent who had the power to terminate Urang's contract and that therefore Urang were in fact answerable to the Respondent, not to the Applicants. Mr Bates also noted that this apparent agreement would have been put in place at a time when Counsel had been instructed by each party, and therefore one would expect there to be a proper written agreement or at least for one or both Counsel to have made a note as to what had been agreed. Ms Erkman said that she had not tried to obtain Counsel's notes but that she had tried, without success, to locate her notes and Urang's notes. Mr Bates put it to her that the 2005/06 agreement to which she referred did not in fact exist.

43. Mr Bates also put it to Ms Erkman that it was clear from correspondence that the Applicants expected the commercial unit or the Respondent to bear 25% of the cost of the structural work needed to be carried out, and there was nothing in the Respondent's eventual reply that indicated that it did not accept that it or the commercial tenant would be obliged to pay 25% of the cost. Ms Erkman suggested in reply that the Respondent's reply was probably a holding reply because it was unclear which works were being referred to.

44. In relation to Urang's email of 3rd August 2011 to the Respondent marked 'very urgent' and stating that Urang had not received any correspondence from the Respondent, why – if this was untrue – did the Respondent not write back to tell Urang that there had been correspondence and attaching copies. Ms Erkman said that it was the Respondent who had been trying to contact Urang, not the other way round. Mr Bates asked why the hearing bundle contained no payment demands from the Respondent, and Ms Erkman said that this was because it was Urang's responsibility to issue demands. Specifically regarding the Respondent's emailed question to Mr Heksel on 29th June 2011 regarding outstanding payments, Mr Bates noted that Mr Heksel emailed back stating that the Applicants had been paying Urang and suggesting that the Respondent contact Urang.

45. As regards the leaseholders' requests for insurance details, Ms Erkman referred the Tribunal to emails dated 3rd and 15th November 2010 dealing with this issue.

Respondent's alternative manager – Mr Jeremy Davies

46. The hearing bundle contains Mr Davies' proposal for management. At the hearing he said that he had not previously been appointed by a tribunal as a manager. He said that he was a solicitor and that his business partner was a qualified surveyor. He considered that it would be a workable solution to split the management of the commercial and residential parts of the Property.

47. In response to a question from the Tribunal Mr Davies confirmed that he had no property management qualifications. It also became apparent that the Respondent had not produced a draft management order (or details of the terms that it would wish to be contained in a management order) as required by the Tribunal's further directions.

48. There was some confusion as to whether Mr Davies was expecting to be appointed as a manager. It emerged that the Respondent's proposal was for the Respondent to appoint Mr Davies as managing agent itself. On taking instructions, Miss Tozer said that if the Tribunal was minded to appoint a manager in principle the Respondent's alternative proposal would be for the order to be suspended for 12 months pending a review as to how effective Mr Davies was as managing agent. The Respondent would be happy for reasonable conditions to be imposed in relation to the carrying out of works and collection of service charge monies, including for example a timeframe for the repair of the flank wall. Failing that, the Respondent requested that Mr Davies be appointed as a manager, and Mr Davies confirmed that he would be happy to be so appointed.

Respondent's further submissions, including closing submissions

49. Miss Tozer submitted that no manager should be appointed. The Respondent suspected that the Applicants' real motive in seeking the appointment of a manager was in fact to arrange for the service charge percentages to be varied in their favour. The Respondent accepted that there had been management problems but felt that the problems were within its control to deal with. As regards communication, the Applicants had not corresponded with the Respondent since September 2011.

50. The Respondent took issue with the list of alleged breaches contained in the section 22 notice. The alleged failure to provide support and protection to the building was inapplicable because no injury to the inside of the building resulted. The failure to supply insurance details only applied to the Respondent's dealings with the leaseholders of Flat 2, and in any event the fault lay with Urang and the information was now available. There was no failure to lay out the net proceeds of insurance in reinstating the common parts because this sum was set off against outstanding ground rent.

51. Miss Tozer said that many of the alleged breaches (paragraphs 1.4 to 1.14 of the notice) related to disrepair after 2006, yet it was agreed with the Applicants that Urang would be responsible for these issues from 2006 onwards and the Applicants did not inform the Respondent that they were unhappy with Urang. The alleged failure to arrange for a periodic valuation was a point which had not

previously been raised. In relation to service charge apportionment, the precise problem was not apparent from the notice and in any event the Respondent considered it reasonable for the residential leaseholders between them to bear the whole cost of maintaining the residential parts of the building.

52. As regards the failure to pass over all monies held in the service charge account, there was no money to pass over because the Applicants had not been paying their service charge contributions. In relation to the various works set out in paragraph 4 of the notice, not all of the works were necessary and it was not accepted that any breaches were the fault of the Respondent as distinct from Urang. Miss Tozer also submitted that the Respondent could run an argument based on estoppel; it was agreed that the Applicants would be in charge of Urang and that the Applicants would between them pay the whole of the cost of the works to the upper parts of the building, and in reliance on this the Respondent took on full responsibility for the ground and lower floors and granted the commercial lease on particular terms.

53. In Miss Tozer's submission it would not be just and convenient to make an order. This jurisdiction is fault-based, and what had happened in this case was simply that the Respondent had stepped back to give the Applicants some autonomy. The Applicants themselves were unable to say whether the problems were the Respondent's fault or Urang's fault. The Applicants did not contact the Respondent prior to serving the section 22 notice, which was unusual.

54. Regarding the Applicants' own conduct, they had not paid the service charges or ground rent on time. Works had not been carried out due to the fact that the Applicants had not been paying the service charge. The Applicants had been in breach of their leases at various times, including decking over the ground floor roof and possibly granting unlawful subleases. The Respondent was confident that Mr Davies was competent and would make a good managing agent.

55. If, despite the Respondent's submissions, the Tribunal was minded to appoint a manager then the Respondent considered that Ms Mooney was not the right person to be appointed as manager. She already had a difficult relationship with the Respondent, and her suggestion that the Respondent be charged 40% of the total service charge costs indicated that she is partisan. As regards the extent of the order, if the Tribunal was minded to make an order, it should be limited to the residential parts. There was no need for a manager of the residential parts to have any control over the commercial part; the Applicants wanted the commercial part to be included so that the service charge apportionments could be changed.

56. As regards the Applicants' draft management order, the Respondent considered it to go far beyond what is necessary to protect the Applicants against the problems which they allege to exist. The draft order expropriates the Respondent's right to withhold consent to assignments, sublettings etc, precludes the Respondent from insuring the building, gives the manager the power to secure borrowing against the freehold, purports to set out a new regime of functions and services, purports to restrict the Respondent's freedom to dispose of the freehold and requires the Respondent to do things such as deliver up documents which it does not possess. Furthermore, Miss Tozer argued that the draft order infringed the Respondent's Article 1 human right to the peaceful enjoyment of its property as it did not strike

a fair balance between the Respondent's property rights (over the commercial unit and more generally) and the rights of leaseholders to proper management.

Applicants' closing submissions

57. In Mr Bates' submission, this case is only complicated if one accepts that the Applicants entered into an agreement in 2005/06 with the Respondent for the Applicants to be in charge of Urang and yet for the Respondent to have the power to sack them. The Tribunal is being asked to accept that this agreement was agreed by Counsel for each party and yet not reduced to writing, even though its effect would constitute a significant lease variation. In any event, the Respondent did not write to the Applicants objecting to the suggestion that the service charge split should be 25% per unit and that therefore the residential leaseholders would not be paying the whole amount between them.

58. In the absence of any such agreement, in Mr Bates' submission this is simply a case of the Respondent not managing its building. It has failed to maintain the exterior flank wall and failed to attend to several high priority fire, health and safety issues. The Respondent has no paperwork to back up its arguments, and there is evidence that Urang have been unable to get hold of the Respondent.

59. As to whether it is just and convenient to grant an order, Mr Bates submitted that the Respondent's best argument as to why it would not be just and convenient was that the Aplicants' are in breach of their payment obligations, but the Applicants' evidence is that they have paid and that it is for the Respondent to liaise with Urang regarding the handing over of any sums due to the Respondent. It was conceded by the Applicants that they had not tried to contact the Respondent after October 2011 but this was because they had given up by then.

60. Regarding the suggestion that – if granted – the management order should be suspended, the onus would be on the Applicants to police the position, which would be unfair on them, and there is no reason to suppose that Mr Davies would be any more successful in obtaining instructions from the Respondent than Urang were.

61. Mr Bates submitted that the manager should be Ms Mooney, who is a professional manager, not a solicitor like Mr Davies, and who has the experience of previously being appointed by a tribunal.

62. In relation to the scope of the manager's powers, Mr Bates referred the Tribunal to the Court of Appeal decision in *Maunder Taylor v Blaquiere (2003) 1 WLR* 379. In relation to the scope of the premises to be the subject of any management order, Mr Bates referred the Tribunal to the Court of Appeal decision in *Cawsand Fort Management Co Ltd v Stafford and others (2008) 1 WLR 371.*

63. In relation to the Respondent's human rights argument, Mr Bates referred the Tribunal to the Second Edition of The Law Of Human Rights edited by Richard Clayton QC and Hugh Tomlinson QC. A distinction needed to be drawn between an extinguishment of rights and a control of use. This draft order would only

control the use of the Property and it was rare for a court to find that a control of use if otherwise lawful represented an infringement of human rights.

64. Regarding the form of the order, it was important for the manager to have the power to ensure that the Respondent accounts for any contribution attributable to the commercial premises, and there was a particular potential difficulty in obtaining contributions from the Respondent given that it was a non UK-based company. As regards giving the manager management functions in relation to the commercial part of the Property, it is all one building and a coherent approach is needed. Also, when carrying out works, the manager will need some powers over the commercial part, even if only to put up scaffolding. As regards apportionment, there was a danger of a service charge shortfall under the residential leases and therefore the manager needs the power to recover this from the landlord.

Tribunal's analysis

65. Having considered the written and oral evidence, including the witness evidence, we prefer the Applicants' evidence in relation to the factual background to this application. Whilst the quality of the Applicants' evidence was a little variable and they struggled at times to identify whether the Respondent or Urang was primarily responsible for the management failings, their written witness statements were credible and stood up reasonably well in cross-examination, albeit that Ms Lodge has been less involved in the process than her witness statement appears to imply. The Applicants' witness evidence is also broadly consistent with the correspondence contained in the hearing bundle, including the correspondence from Urang to the Respondent seeking – and seemingly not obtaining – instructions on various points.

66. It is noted that the Applicants did not write to the Respondent between October 2011 and the date of service of the section 22 notice and that they then waited about a year between serving the notice and making the application. That is not ideal, and the Respondent has some justification for suggesting that the Applicants could have handled matters better in this regard and in particular could have given the Respondent more warning before serving the notice. However, ultimately we believe the Applicants when they say that they had at that stage given up trying to communicate normally with the Respondent, and we accept that they had good reason to be very frustrated with the general lack of response. In addition, as the Respondent employed managing agents it is in our view arguable that the Applicants were entitled to treat Urang as their point of contact until such time as they needed to serve a formal notice on the Respondent as landlord.

67. As regards the Respondent's witness evidence, we find this to be less compelling than that of the Applicants. Ms Tekman did not make herself available to be cross-examined on her witness statement, for reasons which are not wholly clear, and she has adduced almost no copy correspondence or other evidence in support of her position.

68. Ms Erkman did make herself available to be cross-examined but it was unclear how much of Ms Tekman's witness statement – which she effectively adopted in her own witness statement – was within Ms Erkman's personal knowledge. In cross-examination her answers were at times unconvincing, and in particular she was unable satisfactorily to explain the Respondent's lack of involvement with the Property or its apparent failure to respond to its managing agents' requests for instructions. The evidence also indicates a pattern of general failure on the part of the Respondent to respond to leaseholders' complaints and to requests for information, with limited exceptions such as a response in November 2010 in connection with building insurance.

69. On the basis of the evidence provided, the Respondent's claim that it was agreed back in 2005/06 that from that point Urang would be answerable solely to the leaseholders without reference to the Respondent is in our view not credible. It seems to be common ground that both parties were being advised by Counsel at the relevant time, and we do not accept it as at all likely that this highly unusual and far-reaching arrangement would have been put in place without it being committed to writing and without anyone having retained any written evidence of the existence of the arrangement, in circumstances where it seems to be common ground between the parties that the Respondent retained the right to sack Urang. Therefore, our finding on this point is that there was no such agreement and therefore that the Respondent retained responsibility for managing the Property and for providing proper instructions to Urang or to any alternative managing agents that it might choose to appoint.

70. As regards the failings complained of in the section 22 notice, we are satisfied that the Respondent is in breach of obligations owed to the Applicants under their respective tenancies. We do not propose commenting separately on each individual matter relied upon by the Applicants, but we are satisfied in particular that the Respondent has failed to comply with its responsibility to maintain the exterior flank wall, to deal with certain other structural issues and to tackle various fire, health and safety issues. A report from Pole Structural Engineers details certain structural problems which in part they describe as possibly dangerous and in part as quite alarming. Although that report is from November 2010 its findings have not been seriously challenged by the Respondent. A more recent report from Quadriga Health and Safety Ltd (May 2013) lists a number of significant high priority fire, health and safety issues which put the residents, their visitors and the visiting emergency services at risk of death or serious injury. The evidence also indicates on balance that, in the absence of any compelling arguments from the Respondent on these points, the Respondent has failed to comply with its decorating obligations and to maintain the common parts generally.

71. As regards the alleged failure to provide a copy of the insurance policy, there is conflicting evidence on this point, and it is not clear to us that the Respondent did actually fail to provide this.

72. As regards the claim that the Respondent has unreasonably required the Applicants to pay 100% of the service charge relating to the building as a whole, the evidence indicates that the Respondent has indeed required the Applicants to pay 100% and in principle we consider this to be unreasonable as it does not take

into account the fact that there is also a commercial unit which should also bear part of the cost. The matter is complicated by the wording of the existing lease of the commercial unit which does not contain a formal service charge. Instead, the commercial lease includes tenant's repairing responsibilities in respect of the structure and exterior of the commercial unit and an informal service charge clause (clause 3.6) which obliges the tenant to contribute towards the cost of certain shared structures/services etc. Given the inconsistency in treatment of service charge issues as between the residential leases and the commercial lease the position is quite complicated, and we do not consider that the Respondent's service charge demands have been sufficiently unreasonable in the circumstances that they would – by themselves – justify the appointment of a manager. In any event, as already noted above, we are satisfied that the Respondent is in breach of obligations owed to the Applicants under their respective tenancies and that therefore we may – and, on the facts of this case, should – order the appointment of a manager subject to satisfying ourselves that it is just and convenient to make an order in all the circumstances of the case.

73. Is it just and convenient to make an order for the appointment of a manager in all the circumstances of the case? In our view it clearly is. The evidence indicates that the Respondent has effectively been an absentee landlord. Even if Urang has also been at fault, and it is not clear on the evidence to what extent its failings stem from an inability to obtain instructions, the Respondent has failed to take responsibility for Urang's actions or inaction and has failed to engage properly with the Applicants, with Urang or with the management of the Property. There have been serious ongoing problems with the Property and we have no confidence on the basis of the evidence provided that the Respondent is willing and able to deal with them in a proper manner.

74. The Respondent claims that the Applicants have failed to pay some or all of the service charges and ground rent, but the evidence does not indicate that the Respondent knows what money has been received by Urang, nor is there any real evidence that the Respondent has sought to chase alleged arrears, let alone contemplated or taken any legal action to recover such alleged arrears.

75. Should the order be made but suspended for 12 months to give the Respondent an opportunity to deal with the issues with the assistance of Mr Davies? In our view, for the reasons given by Mr Bates, this would not be fair on the Applicants and the likelihood is that this would just perpetuate the problems. It would leave the Respondent in control, and the Respondent's failings to date and the breakdown in relations with the Applicants do not inspire confidence that the Property would be properly managed.

76. Should Mr Davies be appointed as the manager? Mr Davies is a solicitor and may well be a good solicitor. However, he has no property management qualifications. Apparently he has a partner who is a qualified surveyor, but this is a personal appointment and we do not consider that it would be appropriate to appoint as a manager someone with no relevant property management qualifications.

77. Should Ms Mooney be appointed as the manager? She has relevant qualifications and experience, has been appointed as a manager previously and came across reasonably well in cross-examination. There are conflicting accounts of her

dealings with Ms Tekman, but we consider her own account of those dealings to be the more credible. It is true that there seems to be some hostility between Ms Mooney and Ms Tekman, but a contested appointment of manager application is one which almost inevitably will excite strong emotions given that it involves the taking away of (in this case) the property owner's right to manage its own building and is fault-based.

78. We note Ms Mooney's assurances that she feels that she can carry out her functions with or without the Respondent's co-operation and we do not consider that she has a conflict of interest merely by virtually of having been introduced to the Applicants' by Ms Lodge's father. She is an experienced professional and will have responsibilities towards this Tribunal as well as to her professional body. We would just remind her of the need to ensure that at all times she takes an objective view as to the most appropriate course of action, that she is fair in her dealings with all relevant parties, that she takes all reasonable steps not to be seen as the Applicants' representative and that she takes legal advice where appropriate.

79. Whilst the above points represent possible concerns, taking everything in the round – including Ms Mooney's qualifications, relevant experience, management plan and performance under cross-examination – we consider that Ms Mooney is a suitable person to be appointed as manager in all the circumstances.

80. What is the extent of the premises to which the order should relate? In *Cawsand Fort Management Co Ltd v Stafford and others* the Court of Appeal stated that the purpose of the legislation was to protect the interests of lessees. The power of the tribunal under section 24(1) of the 1987 Act was to appoint a manager "in relation to" any premises to which that part of the 1987 Act applies, and this provision was to be interpreted widely and should not necessarily be limited to functions carried out on those premises. On the facts of this case, we agree with Mr Bates that the manager should manage the whole building. There will be practical issues to deal with which are better controlled by one manager, and the prospect of Ms Mooney being reliant on the Respondent's management of the commercial premises, given its track record to date and hostility towards Ms Mooney, is unattractive.

81. As regards the terms of the order, unless there are good reasons to the contrary the manager should be given wide enough powers such that she can carry out a reasonable management plan without being hampered by a lack of ability to enforce reasonable payment obligations or by a lack of control over key parts of the Property or key rights. In the Court of Appeal case of *Maunder Taylor v Blaquiere* Aldous LJ stated that the manager need not be confined to carrying out the duties of the landlord and that there is no limitation as to the management functions of the manager. He added that the tribunal is concerned to provide a scheme of management not just a manager of the landlord's obligations and that it must be possible for the manager to obtain funds necessary to manage the property.

82. In our view the manager in this case should be given the power to receive ground rents as she may well need to seek payment from the Respondent for service charge costs attributable to the commercial unit and there could be difficulties in

recovering these costs from a reluctant non-UK company. We also consider, based on the evidence, that Ms Mooney has reasonable grounds for being concerned that the Respondent may try to be obstructive in other respects and that therefore it would be reasonable to allow her the power of enforcement action in relation to any sums due from the Respondent, to rank and claim in any insolvency of the Respondent, to require the provision by the Respondent of keys etc and (to the extent available) relevant information to enable her to do her job effectively and the power to give consents in place of the Respondent. Similarly, to maximise the chances that the commercial tenant complies with its covenants and pays any sum which it is fair and reasonable to require it to pay it is in our view appropriate to give Ms Mooney reasonable enforcement powers against the commercial tenant direct.

83. As regards Ms Mooney's proposed fee, whilst it is arguably slightly on the high side, in our view it is within the parameters of what is reasonable.

84. As regards paragraph 8 of the draft order, as noted above the service charge provisions contained in the residential leases and the commercial lease, when considered in aggregate are unsatisfactory. There is arguably no perfect solution to this problem in the absence of a variation of all of the leases, and such a variation would probably be difficult and expensive to achieve. Given the situation in which the parties find themselves, in our view the Applicants' proposal on this point is a reasonable solution and it has the merit of giving Ms Mooney clear instructions as to how to deal with the matter and sufficient control to enable her to deal with service costs effectively.

85. The Applicants have requested that the appointment be for 3 years. On balance we consider that 2 years would be more appropriate. This should give Ms Mooney enough time to sort out any major problems and to place the management of the Property on a more professional footing. If, for whatever reason, things are not working as well as they should be after 2 years then limiting it to an initial 2 year appointment would enable everyone to take stock at that stage.

86. We do not consider it appropriate to deal with the section 20C application within the body of the management order itself; the section 20C application is dealt with below. As regards the proposed right for the manager to raise an interim service charge in accordance with a specific budget, there has been no analysis of this budget in written submissions or at the hearing and therefore this has been amended so as to allow the manager simply to raise an interim service charge in accordance with a reasonable budget. As regards the power to pursue a claim under any existing insurance policy we do not consider it helpful to link this to a specific report (the Michael Chester & Partners report) from November 2010. In paragraph 6 of the order we consider that 48 hours' notice is more practicable than 24 hours' notice.

87. We do not accept that this appointment would infringe the Respondent's human rights in breach of Article 1. As Mr Bates submits, the appointment of a manager involves a control of the use of the Property rather than an extinguishment of the Respondent's rights and as such the bar is higher for a person (in this case a company) wishing to assert that its human rights have been infringed in breach of

Article 1. We do not consider that there are any exceptional factors in this case which would justify treating this as a breach.

Cost applications

88. The Applicants have applied for a section 20C order, this being an order that the Respondent may not include in the service charge any costs, or a proportion of the costs, incurred in connection with these proceedings. In our judgment it would be just and equitable in all the circumstances to make such an order and to order that the Respondent may not include in the service charge any costs incurred by it in connection with these proceedings. The Applicants have been successful in their application for the appointment of a manager and were therefore fully justified in making the application. The need for the appointment of a manager was precipitated by serious management failings on the part of the Respondent, and in our view much of its evidence has been weak.

Name: Judge P Korn **Date:** 30th April 2015

Appendix 1 – relevant legislation

Landlord and Tenant Act 1987

Section 22

(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.

Section 24

(1) A 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 property, or (b) such functions of a receiver, or both, as the tribunal thinks fit.

(2) A tribunal may only make an order under this section ... (a) where the tribunal is satisfied ... that any relevant person is in breach of any obligation owed by him to the tenant ... and that it is just and convenient to make the order in all the circumstances of the case; (ab) where the tribunal is satisfied that unreasonable service charges have been made, or are proposed or likely to be made and that it is just and convenient to make the order in all the circumstances of the case ... (ac) where the tribunal is satisfied that any relevant person has failed to comply with any relevant provision of a code of practice ... and 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.

Appendix 2 – Management Order

CASE NO LON/00AW/LAM/2014/0018
IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

IN THE MATTER OF SECTION 24(1) OF THE LANDLORD AND TENANT ACT 1987
AND IN THE MATTER OF 135 LADBROKE GROVE, LONDON W11 1PN

BETWEEN:

SOPHIE LODGE (1)
PUJA CHANDRA DAVDA (2)
KONRAD PATRICIO COLLAO HEKSEL (3)
SARA ARORA (4)

Applicants

and

QUEENSBRIDGE INVESTMENTS LIMITED

Respondent

MANAGEMENT ORDER

Interpretation:

In this order

(a) "Commercial Tenant" means the tenant of the ground and lower ground floors of the Premises currently demised pursuant to the terms of a lease dated 18 January 2012 and registered under Title Number BGL87897 including any successors in title

(b) "Common Parts" means any garden area, postal boxes, refuse store, cycle store, security gates, lifts, paths, halls, staircases and other access ways and areas (if any) within the Premises that are provided by the Respondent for common use by the Lessees or persons expressly or by implication authorised by them

(c) "Functions" means any functions in connection with the management of the Premises including any obligations and powers of the Respondent under the Leases

(d) "Leases" means the long leases vested in the Lessees

(e) "Lessee" means a tenant of a dwelling holding under a long lease as defined by section 59(3) of the Landlord & Tenant Act 1987 ("the Act")

(f) "the Manager" means Ms Alison Mooney MRCIS AssocRICS, of Westbury Residential Limited, Suite 2 De Walden Court, 85 New Cavendish Street, London W1W 6XD

(g) "the Premises" all that property known as 135 Ladbroke Grove, London W11 1PN including the commercial unit on the ground and lower ground floors

(h) "the Respondent" includes any successors in title of the freehold estate registered under title number LN144645 or any interest created out of the said freehold title

Preamble

UPON the Applicants having applied for the appointment of a manager under Part II, Landlord and Tenant Act 1987

AND UPON the First-Tier Tribunal being satisfied that the Applicants are entitled to so apply and that the jurisdiction to appoint a manager is exercisable in the present case

AND UPON the First-Tier Tribunal being satisfied that the conditions specified in section 24, Landlord and Tenant Act 1987 are met, such that it is just and convenient to appoint a manager

IT IS ORDERED THAT

The Manager

1 Ms Alison Mooney MRCIS AssocRICS, is appointed Manager (including such functions of a Receiver as are specified herein) of the Premises pursuant to section 24 of the Act for a period of two years commencing on 1st May 2015 and is given for the duration of her appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of the Respondent and in particular:

(a) To receive all service charges, interest and any other monies payable under the Leases and any arrears due thereunder, the recovery of which shall be at the discretion of the Manager.

(b) The right to treat the service charge financial year as commencing on the date of this Order and ending on 31 December 2015 and thereafter as running from 1 January to 31 December in each year this Order is in place.

(c) The right to give notice and raise an interim service charge in accordance with a reasonable budget as soon as she deems necessary.

(d) To receive the ground rents reserved under the Leases and any rents reserved in respect of the commercial unit situated on the ground and lower ground floors of the Premises and to account annually to the Respondent in respect of the same, save that she shall be entitled to deduct any sums owing from the Respondent in respect of service charge contributions and/or her fees.

(e) The power and duty to carry out the obligations of the Respondent contained in the Leases and in particular and without prejudice to the foregoing.

(i) The Respondents' obligations to provide services;

(ii) The Respondents' repair and maintenance obligations; and

(iii) The Respondent's power to grant consent.

(f) The power, if so required, to pursue a claim in the Respondent's name under any existing insurance policy for the Premises in respect of such repairs/works as have been identified as being required.

(g) The power to delegate to other employees of Westbury Residential Limited, appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as she may reasonably require to assist her in the performance of her functions.

(h) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform herself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.

(i) The power in her own name or on behalf of the Respondent to bring or defend any legal action or other legal proceedings in connection with the Leases or the Premises and to make any arrangement or compromise on behalf of the Respondent including but not limited to:

(i) proceedings against any Lessee in respect of arrears of service charges or other monies due under the Leases;

(ii) legal action to determine that a breach of covenant has accrued;

(iii) legal action to prevent a further breach of covenant.

(j) The power to commence proceedings or such other enforcement action as is necessary to recover sums due from the Commercial Tenant and/or the Respondent pursuant to paragraphs 1(d), 1(e) and 7 of this Order.

(k) The power to enter into or terminate any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of her functions.

(l) The power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to her appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to section 42 of the Landlord and Tenant Act 1987. The Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the Leases (if any) or to powers given to her by this Order) and all other monies received pursuant to her appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund.

(m) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the Respondent, the Commercial Tenant or any Lessee owing sums of money to the Manager.

(n) The power to borrow all sums reasonably required by the Manager for the performance of her functions and duties, and the exercise of her powers under this Order in the event of there being any arrears, or other shortfalls, of service charge contributions due from the Lessees or any sums due from the Respondent or the Commercial Tenant, such borrowing to be secured (if necessary) on the interests of the Respondent in the Premises or any part thereof against the registered estate of the Respondent registered under title number LN144645.

2 The Manager shall manage the Premises in accordance with:-

(a) the Directions of the Tribunal and the Schedule of Functions and Services attached to this Order;

(b) the respective obligations of all parties – landlord and tenant – under the Leases and in particular with regard to repair, decoration, provision of services and insurance of the Premises; and

(c) the duties of managers set out in the Service Charge Residential Manager Code (the "Code") or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform Housing and Urban Development Act 1993.

3 From the date of this Order, no other party shall be entitled to exercise a management function in respect of the Premises where the same is a responsibility of the Manager under this Order.

4 From the date of this Order, the Respondent shall not, whether by itself or any agent, servant or employee, demand any further payments of service charges, administration charges, ground rents or any other monies from the Lessees or the Commercial Tenant at the Premises. Such functions are transferred to the Manager forthwith.

5 The Respondent, the Commercial Tenant and the Lessees and any agents or servants thereof shall give reasonable assistance and cooperation to the Manager in pursuance of her duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of her said duties and powers.

6 From the date of this Order, the Respondent, the Lessees and Commercial Tenant shall - on receipt of 48 hours written notice – give the Manager reasonable access to any part of the Premises which she might require in order to perform her functions under this Order.

7 Without prejudice to the generality of the foregoing hereof:-

(a) The Respondent, whether by itself, its agents, servants or employees, shall by 29th May 2015 deliver to the Manager all such accounts, books, papers memoranda, records, computer records, minutes, correspondence, emails, facsimile correspondence and other documents as are necessary to the management of the Premises as are within its custody, power or control together with any such as are in custody, etc of any of its agents, servants or employees in which last case it shall take all reasonable steps to procure delivery from its agents, servants or employees.

(b) Within 14 days of compliance with paragraph 7(a) above the Manager shall decide in her absolute discretion which of any contracts she will assume the rights and liabilities under.

(c) The Respondent shall by 29th May 2015 deliver to the Manager all keys, fobs and other access/entry cards to the Premises. If the Respondent fails to deliver such keys etc, the Manager shall be entitled to remove the existing locks and other security systems currently installed at the Premises and install such locks and other security as, in her absolute direction, she thinks fit.

(d) The Respondent shall by 29th May 2015 deliver to the Manager all keys to electricity, gas, water and any other utility meters located in the Premises. To this end, the Respondent shall give the Manager full access to the electricity, gas and water meters fuse board and any other utility meters located in the Premises.

(e) The Respondent shall by 29th May 2015 give full details to the Manager of all sums of money it holds in the service charge fund and any reserve fund in relation to the Premises,

including copies of any relevant bank statements and shall forthwith pay such sums to the Manager. If the Respondent shall thereafter receive such sums under the Leases of any Lessee it shall forthwith pay such sums to the Manger without deduction or set-off.

(f) The Respondent shall permit the Manager and assist her as she reasonably requires to serve upon Lessees any Notices under section 146 of the Law of Property Act 1925 or exercise any right of forfeiture or re-entry or anything incidental or in contemplation of the same.

(g) The rights and liabilities of the Respondent as landlord arising under any contracts of insurance to the Premises shall from the date hereof become rights and liabilities of the Manager.

(h) The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges) in accordance with the Schedule of Functions and Services attached.

8 The First-Tier Tribunal being satisfied that the liability for the Schedule 1 Service Charges under the Leases will result in a 75% recovery of the costs and expenditure in providing services to the Premises, orders the Respondent to pay 25% of the expenditure, so as to ensure that the Manager can obtain 100% service charge recovery and the Manager is authorised to demand, claim and, if necessary, sue for the same. Such sums to be computed as if the Eighth Schedule of the Leases applied.

9 The Manager shall in the performance of her functions under this Order 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 performance of the said functions and shall ensure she has appropriate professional indemnity cover in the sum of at least £2,000,000 providing copies of the current cover note upon request by any Lessee, the Respondent or the Tribunal.

10 The Manager shall act fairly and impartially in her dealings in respect of the Premises.

11 The Manager is directed to register a restriction in Land Registry standard Form N against the Respondent's freehold estate registered under title number LN144645 in the following words:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by Ms Alison Mooney of Westbury Residential Limited, Suite 2 De Walden Court, 85 New Cavendish Street, London W1W 6XD."

12 The Manager shall be appointed from the date of this Order and the duration of her appointment shall be limited to a period of two years from the date hereof.

13 The obligations contained in this Order shall bind any successor in title and the existence and terms of this Order must be disclosed to any person seeking to acquire either a leasehold interest (whether by assignment or fresh grant) or freehold.

Liberty to apply

14 The Manager may apply to the First-Tier Tribunal for further directions, in accordance with section 24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:

a. Any failure by any party to comply with an obligation imposed by this Order;

b. For directions generally;

c. Directions in the event that there are insufficient sums held by her to discharge her obligations under this Order and/or to pay her remuneration.

SCHEDULE

FUNCTIONS AND SERVICES

Financial Management:

1. Prepare an annual service charge budget (consulting with the Lessees as appropriate), administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees and the Respondent as per the percentage share under the terms of this Order.

2. Demand and collect service charges, insurance premiums and any other payments due from the Lessees and the Respondent in the percentage proportions set out at the Annex to this Order. Instruct solicitors to recover any unpaid service charges, and any other monies due to the Respondent.

3. Produce for inspection, (but not more than once in each year) within a reasonable time following a written demand by the Lessees or the Respondent, relevant receipts or other evidence of expenditure, and provide VAT invoices (if any).

4. Manage all outgoings from the funds received in accordance with this Order in respect of day to day maintenance and pay bills.

5. Deal with all enquiries, reports, complaints and other correspondence with Lessees, solicitors, accountants and other professional persons in connection with matters arising from the day to day financial management of the Premises.

Insurance:

6. Take out on behalf of the Respondent and in accordance with the terms of the Leases an insurance policy in relation to the buildings and the contents of the common parts of the Premises with a reputable insurer, and provide a copy of the cover note to all Lessees and the Respondent.

7. Manage or provide for the management through a broker of any claims brought under the insurance policy taken out in respect of the Premises with the insurer.

Repairs and Maintenance:

8. Deal with all reasonable enquiries raised by the Lessees in relation to repair and maintenance work, and instruct contractors to attend and rectify problems as necessary.

9. Administer contracts entered into on behalf of the Respondent and Lessees in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to such contracts.

10. Manage the Common Parts, and service areas of the Premises, including the arrangement and supervision of maintenance.

11. Carry out regular inspections (at the Manager's discretion but not less than four per year) without use of equipment, to such of the Common Parts of the Premises as can be inspected safely and without undue difficulty to ascertain for the purpose of day-to-day management only the general condition of those Common Parts.

Major Works:

12.

(a) In addition to undertaking and arranging day-to-day maintenance and repairs, to arrange and supervise major works which are required to be carried out to the Premises (such as extensive interior or exterior redecoration or repairs required to be carried out under the terms of the Leases or other major works (including structural repairs) where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on the Lessees and supervise the works in question).

(b) In particular to undertake as soon as practicable a full health and safety review and an assessment of the electrical supply to the Premises.

Administration and Communication:

13. Deal promptly with all reasonable enquiries raised by Lessees, including routine management enquiries from the Lessees or their solicitors.

14. Provide the Lessees with telephone, fax, postal and email contact details (including emergency contact details) and complaints procedure.

15. Keep records regarding details of Lessees, agreements entered into by the Manager in relation to the Premises and any changes in Lessees.

Fees:

16. Fees for the above mentioned management services (with the exception of supervision of major works) would be a fee of £2,000 plus VAT per annum for the Premises for the first 12 months of the appointment. Thereafter the fee shall reduce to £1,200 plus VAT per annum.

17. An additional charge shall be made in relation to the arrangement of major works (including the preparation and service of any statutory consultation notices) on the basis of a fee of 1% of the cost of the works plus VAT.

18. An additional charge shall be made in relation to the arrangement, claims handling and brokerage of insurances for the Premises, public liability, engineering and employee cover on the basis of a fee of 15% of the insurance premium.

19. An additional charge for dealing with solicitors' enquiries on transfer will be made in the sum not to exceed £275 plus VAT payable by the outgoing Lessee.

20. The undertaking of further tasks which fall outside those duties described above are to be charged separately at a rate of between £50 to £150 plus VAT (depending on seniority) or such other rate as shall be agreed.

21. The Manager is entitled to be reimbursed in respect of reasonable costs, disbursements and expenses (including, for the avoidance of doubt, the fees of Counsel, solicitors and expert witnesses) of and incidental to any application or proceedings (including these proceedings) whether in the Court or First-Tier Tribunal, to enforce the terms of the Leases. For the avoidance of doubt, the Manager is directed to use reasonable efforts to recover any such costs etc directly from the party concerned in the first instance and will only be entitled to recover the same as part of the service charges in default of recovery thereof.

Annex

Service Charge Proportions

Unit Description	Schedule 1 Percentages (Service Charges relating to Premises)	Schedule 2 Percentages (Service Charges relating to Residential Areas)
1	25%	33.33%
2	25%	33.33%
3	25%	33.33%
Commercial	25%	0%
Total	100%	100%