FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	**:**	**(1) BIR/41UE/LAM/2019/0003** **(2) BIR/41UE/LLC/2019/0009**
Subject premises	**:**	**Tower Court/Trinity Court/Windsor Court** **No 1 London Road** **Newcastle-under-Lyme** **ST5 1LT**
Applicant	**:**	**Kate Louise Williams**
Representative	**:**	**Christopher Williams**
Respondent	**:**	**Number One London Road Management Company Limited**
Representative	**:**	**Charles Sinclair of Counsel**
Type of Application	**:**	**(1) Application under section 24 of the Landlord and Tenant Act 1987 for the appointment of a manager** **(2) Application under section 20C of the Landlord and Tenant Act 1985 for an order for the limitation of costs**
Dates of Hearing	**:**	**30 October 2019** **23 January 2020**
Tribunal Members	**:**	**Deputy Regional Judge Nigel Gravells** **Graham Freckelton FRICS**
Date of Decision	**:**	**11 February 2020**

DECISION

Introduction

1 This is a decision on two applications by the Applicant, Ms Kate Louise Williams, the leaseholder of 21 Tower Court, No 1 London Road, Newcastle-under-Lyme, ST5 1LT. By the first application, under section 24 of the Landlord and Tenant Act 1987 ('the section 24 application') the Applicant applied for an order appointing Mr Christopher Williams as manager of the No 1 London Road development. As explained below, the Applicant subsequently nominated Mr I Hollins, Director of Clear Building Management, the current managing agents, to be the manager. By the second application, under section 20C of the Landlord and Tenant Act 1985 ('the section 20C application') the Applicant applies for an order for the limitation of costs.

2 The Respondent is No 1 London Road Management Company Limited, the freeholder and current manager of the No 1 London Road development.

3 A preliminary notice under section 22 of the 1987 Act dated 23 April 2019 was served on the Respondent.

4 The original applications, dated 4 June 2019, were received by the Tribunal on 5 June 2019.

5 The Tribunal issued Directions on 29 June 2019. Further Directions for the disclosure of documents were issued on 19 July 2019.

6 On 2 September 2019 the Tribunal directed that it would be appropriate to determine the section 24 application in two stages. In the first instance it would hold a hearing to determine whether the Tribunal was satisfied that it was just and convenient to appoint a manager in place of the Respondent. If so satisfied, it would hold a further hearing to consider the appropriateness of the original proposal for the appointment of Mr Williams.

7 On 30 October 2019 the Tribunal inspected the internal and external common parts of the development. Present at the inspection were (i) Mr C Williams, representing the Applicant, and (ii) representing the Respondent, Mr C Sinclair, of Counsel, Mr I Hollins, Director of Clear Building Management Limited, the current managing agents, and Mr T Nesbitt, Mr B Harrison and Mr J Shaw, all Directors of the Respondent company. Also present were Mr A Nuttall, caretaker of the development, and Mr K Knapper and Mr G Luznyj, of Staffordshire Fire and Rescue.

8 On the same date, a hearing was held at Stoke Combined Court Centre.

9 Following the hearing, the Tribunal formed the provisional view that, for reasons explained below, the best solution to the issues raised by the application would be an order appointing Mr Hollins as manager in place of the Respondent. Indeed, both parties have indicated that in principle they would support such an appointment, the Respondent in its skeleton argument submitted for the hearing on 30 October 2019 and the Applicant in a letter to the Respondent dated 6 November 2019.

10 Accordingly, since the Tribunal has no jurisdiction to order the appointment a manager who is not proposed in the application, on 2 December 2019 the Tribunal issued Directions inviting the Applicant to amend her application by substituting Mr Hollins as the proposed manager.

11 The Applicant indicated that she would only make the amendment on condition that Mr Hollins gave certain undertakings including the appointment of a qualified fire engineer to assess the fire-related issues with the development and the sending of a letter to the leaseholders setting out a range of issues relating to the development.

12 Mr Hollins stated that he had been 'instructed not to consent to any conditions'.

13 On 11 December 2019 the Tribunal issued Directions for a second hearing at which it would hear further submissions on the future management of the development. That hearing was held on 23 January 2020 in Birmingham.

Background

14 The No 1 London Road development ('the development') comprises three interlinked blocks of flats (Tower Court, Trinity Court and Windsor Court) with a total of 93 flats. There are dedicated parking spaces in a covered car park on the lower floors of the block. The development includes an indoor fitness centre and outdoor paved areas.

15 The Applicant became registered proprietor of the 999-year lease of 21 Tower Court on 24 February 2017.

16 At that time the day-to-day management of the development was delegated to Keates Hulme, who had been appointed as managing agent by the Respondent in 2016. On 1 March 2018 Keates Hulme was replaced by Premier; and on 1 March 2019 Premier was replaced by Clear Building Management Limited, the current managing agent.

17 Soon after the Applicant acquired the lease, Mr Christopher Williams, the Applicant's father, started a wide-ranging investigation into the management of the development. This resulted in a significant amount of correspondence between Mr Williams, the Respondent and the managing agents at the relevant time. As a result of that investigation Mr Williams formed the view that the management was unsatisfactory.

18 Consequently, on 23 April 2019, on behalf of the Applicant, Mr Williams initiated the preliminary stage of the section 24 application for the appointment of a manager. Pursuant to section 22 of the Landlord and Tenant Act 1987, he served a notice on the Respondent, indicating that the Applicant intended to apply for an order for the appointment of a manager, specifying the grounds on which the Tribunal would be asked to make the order.

19 The specified grounds were -

(i) the Respondent has no legitimate basis under which to demand service charges;

(ii) the Respondent is in breach of obligations owed to the tenants under the lease;

(iii) the Respondent has failed to keep proper financial records in breach of the lease, section 22 of the Landlord and Tenant Act 1985 and section 386 of the Companies Act 2006;

(iv) the Respondent has failed to consult with members on major works in breach of section 20 of the Landlord and Tenant Act 1985;

(v) the Respondent is in breach of section H6 of Approved Document H of the Building Regulations;

(vi) the Respondent is in breach of the General Data Protection Regulation (GDPR);

(vii) the Respondent is in breach of the statutory duty of care to their tenants (and anyone who enters the property) to inform them of potentially life-threatening defects existing in the building;

(viii) the Respondent's failure to address the serious and ongoing fire safety issues may breach Article 2 of the European Convention on Human Rights;

(ix) the Respondent has acted in excess of its authority in its dealings with NHBC;

(x) the Respondent has Directors who lack the necessary knowledge and understanding to discharge their fiduciary duty to an acceptable standard. Their actions are prejudicing the safety of users of the building. This makes it just and convenient to appoint a manager.

20 Although the Applicant considered that certain matters were not capable of remedy, pursuant to section 22(2)(d) of the Landlord and Tenant Act 1987, Mr Williams required the Respondent to remedy a range of matters and to do so within 35 days.

21 On 6 June 2019 Mr Hollins, Director of Clear Building Management Limited, on behalf of the Respondent, wrote to Mr Williams in response to the preliminary notice; but, unknown to the Respondent, two days earlier the Applicant had sent the current section 24 application to the Tribunal.

Section 24 application

22 Section 24 of the Landlord and Tenant Act 1987 provides (so far as material) –

(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;

(ac) where the tribunal is satisfied –

(i) that any relevant person has failed to comply with any relevant provision of any 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.

23 In his preliminary notice Mr Williams appeared to rely on section 24(2)(a), (ab), (ac) and (b) of the Landlord and Tenant Act 1987 ('the 1987 Act'). However, although his allegations, if proved, would address the first requirement, Mr Williams did not specifically address the second and separate requirement that the Tribunal must be satisfied that 'it is just and convenient to make the order in all the circumstances of the case'.

24 The Respondent not only sought to answer the specific allegations but, on the ground that many of those allegations were historic, the Respondent understandably concentrated on the second requirement.

The first requirement

25 As noted above, Clear Buildings Management Limited, on behalf of the Respondent, responded to the Applicant's preliminary notice on 6 June 2019. Mr Hollins expanded on that response in the Respondent's Statement of Case dated 9 August 2019. Although Mr Williams expanded on the allegations set out in the preliminary notice in an undated document included in the Applicant's hearing bundle, it is appropriate to address his allegations in the terms set out in the preliminary notice.

The Respondent has no legitimate basis under which to demand service charges

26 Under the terms of the Applicant's lease – and it was not suggested that the other leases in the development differed – the service charge is to be apportioned in accordance with 'a rateable proportion calculated by reference to gross internal area of the Apartments of the Building, such gross internal area to be certified by the Landlord's surveyor'. Mr Williams argued that the Respondent had failed to adopt the approach to apportionment as required by the lease, even after it was informed of the discrepancy.

27 Mr Williams argued that this approach (i) constituted a breach of the lease and (ii) demonstrated that the Respondent 'wilfully disregarded their legal obligation'. However, he did not present any evidence to establish that the historic apportion of the service charge had resulted in a different apportionment from that required by the lease.

28 Mr Hollins, on behalf of the Respondent, acknowledged that the service charge apportionment had in fact always been determined by reference to the floor areas of apartments detailed in pre-sales particulars; and since he acknowledged that this arguably did not meet the strict requirement of the lease, he had instructed a surveyor to prepare a certified list in compliance with that requirement. However, in the light of a letter dated 17 May 2017 from Keates Hulme to Mr Williams, in which Mr Hulme, a Chartered Surveyor, stated 'I can certify that the proportions applied to service charge budget are substantially correct and within any tolerances of error which would be produced by a re-measurement', Mr Hollins had concluded that the substantial cost of a re-measurement exercise would be disproportionate and unnecessary.

29 In the circumstances, the Tribunal finds that there may have been a technical breach of the lease but that there is no evidence that the Applicant (or other leaseholders) have been prejudiced by that breach. The Tribunal does not accept that any failure on the part of the Respondent can be described as 'wilful'.

The Respondent is in breach of obligations owed to the tenants under the lease

30 The details under this allegation appear to relate to fire safety and are considered below (paragraphs 52-55).

The Respondent has failed to keep proper financial records in breach of the lease, section 22 of the Landlord and Tenant Act 1985 and section 386 of the Companies Act 2006)

31 Mr Williams raised a number of issues under this heading –

(1) the inclusion in the accounts for the 2016/2017 service charge year of expenditure of approximately £18,600.00 for which there are no receipts;

(2) surpluses in the accounts which have not been returned to the leaseholders;

(3) the offer of a discount to leaseholders paying their entire annual service charges in advance;

(4) failure to provide accounts within six months;

(5) lack of transparency in the accounts including lack of correspondence between account headings in the budgets and the service charge accounts;

(6) failure to provide access to expenditure receipts;

(7) failure to account for corporation tax.

32 (1) Although no receipts have been produced to support the expenditure of approximately £18,600.00 in the 2016/2017 service charge year, the

accounts for that year were certified by an independent accountant. However, Clear Building Management Limited has written to the accountant in an attempt to obtain further clarification of the expenditure. At the first hearing Mr Hollins suggested that the expenditure might relate to management fees charged by the then management agent; but that explanation was proved to be incorrect when Mr Williams produced invoices from Keates Hulme for its management fees. However, in the experience of the Tribunal, it is not unknown for legitimate expenditure to be unsupported by invoices but nonetheless be properly included in service charge accounts.

33 (2) The lease provides that surpluses shall be paid to the leaseholders or allowed to the leaseholders as a credit in the accounts for the following service charge year. The Tribunal accepts the assertion of the Respondent that established surpluses have been credited to the leaseholders' service charge accounts.

34 (3) Mr Williams challenged as unlawful an offer by the Respondent of a five per cent discount to leaseholders paying their entire annual service charge in advance (rather than by two half-yearly instalments). The Respondent stated that the offer was made in respect of two billing periods only and that the discounts had been recovered. The Tribunal accepts the evidence of the Respondent; and, in the absence of any evidence that the discount offer has resulted in any leaseholder paying higher service charges, the Tribunal is not satisfied that there was any breach of the lease.

35 (4) Clear Building Management is committed to the timely production of service charge accounts but a number of unresolved financial issues together with the two changes of managing agent in the past two years had created difficulties in meeting deadlines.

36 (5) Clear Building Management accepts the need for transparency and correspondence between account headings in the budgets and the service charge accounts. It has undertaken to adopt appropriate heads of expenditure for the future.

37 (6) Clear Building Management is committed to ensure access to all relevant documentation.

38 (7) Clear Building Management has undertaken to resolve historic issues relating to corporation tax liability and has taken steps to remove such liability for the future.

39 Under this heading Mr Williams also argued that the Respondent had breached the Employment Rights Act 1996 in wrongly treating the caretaker and cleaner as self-employed (and not employees). Whatever the merits of that argument, the Tribunal determines that it has no relevance to the current application.

The Respondent has failed to consult with members on major works in breach of section 20 of the Landlord and Tenant Act 1985

40 Mr Williams argued that the Respondent had failed to comply with the statutory consultation requirements in relation a qualifying long term agreement and various qualifying works –

(1) Managing agency agreements between the Respondent and Keates Hulme and between the Respondent and Clear Building Management Limited;

(2) Fire-stopping works to the electrical risers and fire doors;

(3) Lift shaft repairs;

(4) Roof repairs;

(5) Re-tiling of the swimming pool.

41 The Respondent argued –

(1) That each of the managing agency agreements did not exceed 12 months in duration and was not therefore a qualifying long term agreement subject to the statutory consultation regime;

(2) That, even if the fire-stopping works are treated as a single set of works (which the Respondent questions), the combined costs were below the threshold that triggers the statutory consultation regime;

(3) That, since costs of the lift shaft repairs were borne by the NHBC, the statutory consultation regime was not engaged;

(4) That, although the NHBC has refused to reimburse the costs of external roof repairs, that refusal is the subject of an application to the Financial Ombudsman;

(5) The costs of re-tiling the swimming pool were below the threshold that triggers the statutory consultation regime.

42 The Tribunal accepts the arguments of the Respondent in relation to (1), (3) and (5). In relation to (2), even if the combined costs exceeded the threshold that triggers the statutory consultation regime, as the Respondent correctly observes, it is highly likely that a Tribunal would grant dispensation from the consultation requirements for such works. In relation to (4), if the application to the Financial Ombudsman does not result in the NHBC bearing the outstanding costs, the statutory consultation regime would be engaged, although again it is possible that a Tribunal would dispense with some or all of the consultation requirements.

The Respondent is in breach of section H6 of Approved Document H of the Building Regulations

43 Mr Williams argued that the location of the refuse storage area (on the lower basement level) means that the Applicant is required to carry refuse a greater distance than the 30 metres referred to in section 1.8 of Chapter 6 of Approved Document H of the Building Regulations 2010.

44 The Respondent made no representations on this matter save to question the assertion of Mr Williams that a refuse storage area on the upper basement level had been removed.

45 The Tribunal notes that the Approved Documents issued in support of the Building Regulations are expressly stated to be guidance only, providing advice on compliance with the Regulations. Paragraph H6(2) of Schedule 1 to the Buildings Regulations 2010 simply states that 'Adequate means of

access shall be provided (a) for people in the building to the place of storage …'.

The Respondent is in breach of the General Data Protection Regulation (GDPR)

46 Mr Williams argued –

(1) That the landlord operates two CCTV systems but has failed to register as a Data Controller;

(2) That CCTV signage in the building is inadequate;

(3) That CCTV in in use in the swimming pool, sauna, gym and associated changing areas, where users of the facilities are in various states of undress.

47 The Respondent argued –

(1) That advice has been sought to ensure compliance with any registration requirements;

(2) That signage is clear and unambiguous;

(3) That there are no cameras in the sauna, changing rooms or toilets or in any other location where users of the facilities might be undressed.

48 The Tribunal finds, on the basis of its inspection of the development, (i) that there is adequate clear signage in appropriate locations and (ii) that there are no cameras in the sauna, changing rooms, toilets or in any location where users of the facilities might be undressed.

The Respondent is in breach of the statutory duty of care to their tenants (and anyone who enters the property) to inform them of potentially life-threatening defects existing in the building

49 Mr Williams alleged that the Respondent is aware of serious (but unspecified) defects in the development and has failed to remedy those defects and/or inform the leaseholders. He listed five reports relating to the physical condition of the building, the contents of which had been withheld from the leaseholders.

50 The Tribunal directed disclosure of those reports in its Directions issued on 19 July 2019.

51 The details under this allegation appear to relate to fire safety and are considered below (paragraphs 52-55).

The Respondent's failure to address the serious and ongoing fire safety issues may breach Article 2 of the European Convention on Human Rights

52 Mr Williams' principal allegation against the Respondent is that it failed to address serious and ongoing fire safety issues affecting the development.

53 In this context Mr Williams referred to the Grenfell Tower fire in June 2017 and argued, by alleged analogy with one of the findings of the report of the Equality and Human Rights Commission, that delays by the Respondent in taking fire-stopping measures amounted to a breach of Article 2 of the European Convention.

54 The Respondent accepted that, although fire safety reviews of the development had been carried out, and the fire services had visited the development, there had been no systematic inspections. However, following an inspection by a fire officer in early 2017, five fire safety reports have been commissioned between September 2017 and July 2019. In response to those reports remedial fire safety work was carried out to the lift shafts, electrical fire riser cupboards and fire doors. Work is still required to the external render but the Staffordshire Fire and Rescue Service and Fire Comply, a fire safety expert, have stated that there is no immediate threat to life and that the evacuation policy remains adequate. Clear Building Management Limited is committed to take any further necessary action identified by outstanding fire safety reports.

55 The Tribunal is satisfied that that fire safety work has been rightly prioritised. It finds that any historic failings on the part of the Respondent have largely been addressed but agrees with the Applicant that the outstanding fire safety issues should be assessed by a *qualified* fire engineer.

The Respondent has acted in excess of its authority in its dealings with NHBC

56 Mr Williams argued (i) that the NHBC's contractual relationship is not with the Respondent but with the individual leaseholders and (ii) that the Respondent acted in excess of its authority (if any) by purporting to represent the leaseholders, by refusing access to the NHBC Settlement Agreement and by refusing access to details of repairs carried out.

57 The Respondent asserted its understanding that it was agreed that the most efficient way of handling the issues with the NHBC was through collective action and that the solicitors instructed to act had the continuing consent of the leaseholders.

58 The Tribunal finds on a balance of probabilities that collective action was agreed.

59 However, the Tribunal is of the view that in those circumstances, since the Respondent and the instructed solicitors were almost certainly acting as agents of the leaseholders (a scenario which with the NHBC should be familiar), the leaseholders were entitled to see the Settlement Agreement and that that entitlement was not excluded by the confidentiality clause in the Settlement Agreement.

60 Similarly, the Tribunal is of the view that the leaseholders were entitled to be given access to the details/specification of the work carried out.

The Respondent has Directors who lack the necessary knowledge and understanding to discharge their fiduciary duty to an acceptable standard. Their actions are prejudicing the safety of users of the building. This makes it just and convenient to appoint a manager

61 Mr Williams argued that (some of) the Directors of the Respondent company have demonstrated a lack of skill, knowledge and understanding in relation to the management of a development such as the No 1 London Road development; and that those shortcomings are compounded by complacency. He submitted that the failings that he has identified 'show a deliberate, systematic and ongoing disregard for the rights of long

leaseholders and far more than an accidental oversight or gap in knowledge, but a cynical approach which necessitates the appointment of a manager'.

62 While acknowledging that there has been some failings in the past, the Respondent argued that Clear Building Management Limited had been appointed with a view to maintaining a consistently professional management regime and that much progress had been made since its appointment.

63 In the view of the Tribunal, the standard of management has improved very significantly since the Respondent appointed Clear Building Management Limited as managing agent in March 2019 – an improvement acknowledged by the Applicant. Moreover, the response of the Respondent to the section 22 notice, which was drafted by Mr Hollins, Director of Clear Building Management Limited, provided evidence that that improvement would be sustained.

64 However, the Tribunal remains concerned that there is a real risk that the efforts and good intentions of Clear Building Management Limited could be frustrated by the continued role of the Respondent in the management of the No 1 London Road development. In the view of the Tribunal, there is evidence that the Respondent has had a negative impact on the management of the development and that that could adversely affect its management in the future.

Summary on the first requirement

65 In relation to the first requirement of section 24(2), for the reasons stated in the preceding paragraphs the Tribunal is satisfied that a number of the Applicant's allegations are well-founded.

66 The Tribunal accepts that some breaches of the terms of the lease, the relevant statutory provisions and the RICS Code of Residential Management are historic – and therefore irrelevant for the purposes of section 24(2)(a), which appears to require a continuing and present breach - and/or can fairly be described as 'technical'. Moreover, it is arguable that, following the appointment of Clear Building Management Limited as managing agents, many relevant historic breaches are being addressed and remedied.

67 However, the threshold of the first requirement is satisfied by establishing a single relevant breach.

<u>The second requirement</u>

68 Turning to the second requirement of section 24(2), the Tribunal must be satisfied that 'it is just and convenient to make the order in all the circumstances of the case'. Whereas the threshold of the first requirement is reasonably easily met, the threshold of the second requirement is rather higher. Tribunals have repeatedly stressed that the appointment of a manager is a remedy of last resort.

69 Against that background, in determining whether it is just and convenient to make an order the Tribunal considered a number of factors –

(1) Although the facts which establish the first requirement are in their nature largely historic, the appointment of a manager is largely concerned with the future; and that requires the Tribunal to assess the

quality of the Respondent's likely future management if the Tribunal does not order the appointment of a new manager. In the view of the Tribunal, the Respondent's response to the section 22 preliminary notice was positive and there is evidence that there have been significant improvements since Clear Building Management Limited was appointed as managing agents on 1 March 2019.

(2) Although a section 24 application by a single leaseholder may in principle succeed, an application made jointly by a significant number of the relevant leaseholders is more likely succeed. In present case the application was made by the Applicant alone. Although Mr Williams emailed those leaseholders included in the 'owners@1LondonRoad.co.uk' account, and sent letters to some other leaseholders, only two other leaseholders indicated a willingness to support the application.

70 While the above factors might seem to militate against a finding that it would be just and convenient to appoint a manager, as already indicated, the Tribunal is of the view that the Respondent has had, and may continue to have, an adverse effect on the proper management of the development.

71 That view has been reinforced by the finding that the Respondent had instructed Mr Hollins not to consent to the Applicant's conditions for proposing the appointment of Mr Hollins as manager. While the Tribunal can understand some reluctance to permit the Applicant to dictate terms, Mr Hollins expressed the view that the Applicant's conditions were not unreasonable *and* that he would agree to such conditions if imposed by the Tribunal.

72 The Tribunal therefore concludes that it is just and convenient to make an order for the appointment of a manager in place of the Respondent.

<u>Appointment of manager</u>

73 If the Applicant had persisted in her proposal that Mr Williams be appointed as manager of the development, that would have created considerable difficulty for the Tribunal –

(1) Although Mr Williams has some practical experience in managing a large block of apartments in Leeds, he has no relevant professional qualification; and the Tribunal is of the view that it could not take the risk of appointing such a person as manager of the No 1 London Road development, especially with its current issues.

(2) The fact that Mr Williams' daughter, the present Applicant, is leaseholder of an apartment in the development, creates a potential conflict of interest in that action required in the interest of the development may not be in the wider interest of the Applicant and vice versa.

(3) The Tribunal questions whether it is practicable for someone who lives 150 miles away to manage a large development and to respond promptly to emergencies and other urgent issues.

(4) The Tribunal notes that, in the original application, the Applicant stated that Mr Williams did not wish to be appointed as manager. It was only when the Tribunal required the Applicant to propose a named person

that Mr Williams indicated that he was prepared to be appointed as manager.

74 For the above reasons, the Tribunal would have been unwilling to appoint Mr Williams as manager of the development.

75 However, at the second hearing Mr Williams indicated that the Applicant was prepared to propose the appointment of Mr Hollins as manager; and Mr Hollins confirmed his willingness to accept the appointment.

76 As indicated above, the Tribunal is satisfied that the standard of management of the development has improved very significantly since Clear Building Management Limited, led by Mr Hollins, was appointed as managing agent in March 2019. The Tribunal is satisfied that Mr Hollins has the required knowledge and experience generally to manage the development and to address and resolve the specific issues currently affecting the development.

77 The Tribunal therefore orders the appointment of Mr Ian Hollins as manager of the No 1 London Road development. Mr Hollins has accepted the appointment and its terms, which are set out in the Order attached as Appendix 1 to this Decision.

78 For the avoidance of doubt, it is important to stress –

(1) that the appointment of Mr Hollins as manager is the appointment of the Tribunal and he is therefore answerable to the Tribunal alone;

(2) that from the date of the Order no other party shall be entitled to exercise a management function in respect of the property where that management function is a responsibility of the manager under this Order;

(3) that from the date of the Order no other party shall interfere or attempt to interfere with the exercise by the manager of any management function which is the responsibility of the manager under this Order.

79 The Tribunal orders that Mr Hollins shall, 12 months (and again 24 months) after the date of the Order, send to the Tribunal a written report on the progress made since his appointment as manager and on any other management issues that he wishes to bring to the attention of the Tribunal; and he shall appear before the Tribunal if he so wishes or if the Tribunal considers it necessary.

Section 20C application

80 Section 20C of the 1985 Act provides (so far as material) –

> (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier Tribunal … are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
>
> …
>
> (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

81 Although the Applicant has failed in her original application to have Mr Williams appointed as manager of the No 1 London development, she has succeeded in establishing the grounds for the appointment of *a* manager in place of the Respondent.

82 Given the improvement in the management of the development since the appointment of Clear Building Management Limited as managing agent in March 2019, it might be argued that the application was premature and that the Applicant should have waited to see whether the improvements would be sustained. However, the Tribunal accepts that the Applicant remained genuinely concerned about the continued role of the Respondent.

83 In the circumstances, the Tribunal is of the view that this is a case in which it is just and equitable that the Respondent should not be entitled to recover costs from the Applicant.

84 The Tribunal therefore makes an order under section 20C of the Landlord and Tenant Act 1985 that the costs incurred by the Respondent in connection with the present proceedings should not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Summary

85 The Tribunal orders –

(1) that Mr Ian Hollins be appointed as manager of the No 1 London Road development on the terms and conditions set out in the Order attached as Appendix 1 to this Decision;

(2) that the costs incurred by the Respondent in connection with the present proceedings should not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Appeal

86 Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party seeking to appeal must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date specified below. That party must - (i) identify the decision to which the appeal relates, (ii) state the grounds on which that party intends to rely in the appeal and (iii) indicate the result which that party is seeking.

11 February 2020

Professor Nigel P Gravells
Deputy Regional Judge