



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

Case reference : **LON/00AG/LAM/2020/0015**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **19 Belsize Crescent, London NW3 5QY**

Applicant : **Ms Alanna Lee and Ms Zoe Wigan**

Representative : **Kester Lees - Counsel**

Respondent : **19 Belsize Crescent Limited**

Representative : **Stan Gallagher - Counsel**

Type of application : **Appointment of Manager**

**Tribunal
member(s)** : **Tribunal Judge Dutton
Mrs S F Redmond BSc (Econ) MRICS**

Venue : **Video Hearing 15 and 16 April 2021**

Date of decision : **8 June 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in bundles totalling some 692 pages, the contents of which we have noted. The order made is described below. The reasons for the decision follow on.

Decision of the tribunal

ORDER

1. In accordance with section 24(1) Landlord and Tenant Act 1987 Mr Elliot Esterson of Trent Park Properties ('the Manager') is appointed as manager of the property at 19 Belsize Crescent, London NW3 5QY ('the Property').
2. The order shall continue for a period of three (3) years less one day from 1 July 2021. Any application for an extension must be made prior to the expiry of that period. If such an application is made in time, then the appointment will continue until that application has been finally determined.
3. The Manager shall manage the Property in accordance with:
 - (a) The directions and schedule of functions and services attached to this order;
 - (b) The respective obligations of the landlord and the leases by which the flats at the Property are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - (c) The duties of a manager set out in the Service Charge Residential Management 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 Leasehold Reform Housing and Urban Development Act 1993.
4. The Manager shall register the order against the landlord's registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.
5. An order shall be made under section 20C Landlord and Tenant Act 1985 that the Respondent's costs before the Tribunal shall not be added to the service charges.

Reasons

Background

1. By an application dated 21 September 2020 the applicants, Alanna Lee and Zoe Wigan sought the appointment of a manager pursuant to s24 Landlord and Tenant Act 1987 (the Act). This followed service of a Notice under s22 of the Act dated 22 July 2020. However, we do not need to go into the details of same for in his opening submission, Mr Gallagher, counsel for the Respondent, 19 Belsize Crescent Limited, conceded that the 'gateway' grounds have been made out and the issue we need to consider was whether it was 'just and convenient' to make

an appointment. As a matter of comment, although the Respondent is referred to, rightly as the Company, in truth this is a dispute between the Applicants on the one hand and the Fletcher/Boardman family on the other.

2. Counsel for both parties, Mr Lees for the Applicants and Mr Gallagher for the Respondent had, very helpfully, agreed that not each and every disputed fact required exploration and that cross examination would be limited to those matters considered relevant and material to their respective cases. This was, however, on the basis that silence on a point was not to be taken as acquiescence.
3. It is common ground that the Respondent has become hamstrung in its ability to manage the property, 19 Belsize Crescent, London NW3 5QY (the Property) because it is a leaseholder owned company with each of the Applicants and Jane Boardman and Sarah Fletcher, mother and daughter, being directors and shareholders. They cannot reach agreement on the running of the Property, or the plans for works.
4. The Property is an end of terraced five storey house comprising flats on the first, second and third floor and maisonette on the lower ground and ground floor, this property having exclusive use of the rear garden. The Applicants own the flats on the first and second floors and Ms Fletcher the flat at the top of the Property. Ms Boardman, the leaseholder of the lower ground and ground floor property, living there with her husband Mr Ronald Fletcher, who is the company secretary of the Respondent.
5. Prior to the hearing we were provided with a bundle of some 623 pages comprising the items set out on the index thereto. These included the application, directions given by the tribunal in October 2020 and experts report of Mr Tarling for the Applicants and Mr Bowden for the Respondent. In addition, we were provided with a statement and a draft management order by Mr Elliot Esterson, the proposed manager and two witness statements each from the Applicants and statements of Ms Fletcher, Ms Boardman and Mr Fletcher for the Respondent. We have noted the contents but have borne in mind the agreement reached between Counsel and will not go into detail in respect that which is said in these statements.
6. The Respondent had sought to submit an additional bundle, containing copies of notices served under the Leasehold Reform, Housing and Urban Development Act 1993 by Ms Boardman and Ms Fletcher as well as purported Deeds of Variation of the two flats owned by them. In addition, there was an updated schedule of works, a video taken by Ms Fletcher and photographs taken by Mr Fletcher. Initially the inclusion of this bundle was objected to by Mr Lees as the photographs and video had been created by interested parties. However, we considered that the photographs and video would provide some assistance and the Notices under the 1993 Act had been served and were known to all concerned.

7. In his oral opening to us Mr Lees confirmed that Mr Esterson was the only candidate for manager and there was no suggestion made by the Respondent that he was unsuitable. The question of a suspension of any order was raised and whether a costs order could be made under s20C of the Landlord and Tenant Act 1985.
8. He drew our attention to the reply to the s22 Notice, which at paragraph 25 indicated a willingness on the Respondent's part to appoint a manager by consent and indeed the directions dated 15 October 2020 provision was made for the Respondent, in the guise of Ms Boardman and Ms Fletcher, to put forward their own nominee. They have not done so.
9. On the question of suspension Mr Lees said this was unfair and no application had been made at the case management hearing
10. Mr Gallagher confirmed that he was not now applying for these proceedings to be adjourned or stayed. It was Counsels' view that the appointment of a manager would not automatically be overtaken if the applications under s13 of the 1993 Act went ahead, as an application would need to be made to vary under s24(9) of the Act and any order would be registered against the title.
11. Counsel had agreed the order in which we should hear from witnesses, with which we concurred. The first person we heard from was Mr Esterson, the proposed manager.
12. Mr Esterson had provided us with a witness statement in which he confirms his understanding of the appointment and his responsibilities. It did not appear from his witness statement that he had inspected the Property but he had read the lease and the financial information. He had also noted the section 22 notice. He comments at paragraph 6 of his statement on the Respondent's reply to section 22 notice and we have noted what has been said. This includes an apparent acceptance that works are required, that proper accounting has not taken place and that there is a lack of management.
13. Under residential management experience he told us that he had been involved in management of residential properties for over 25 years and had worked for a number of well-established property management companies. In 1997 he began trading as Trent Park Properties primarily a dedicated managing agent for the Co-Operative Group. However, as a result of the reduction in the Co-Ops residential property portfolio, and as a result of an unsuccessful bid to deal with the southeast region he lost the management of the remaining 44 units.
14. We noted that the company is a member ARMA and have ARMA-Q accreditation. He told us he had been appointed by the Tribunal in 2007 for a property at 45 Lea Bridge Road, London and more recently at a property in Holloway Road. He was also able to confirm that he

managed 25 Belsize Crescent just a few doors away from the subject property and had been appointed as managing agents by the freeholder in 2005. His statement then went on to confirm the services that he offers and that which he would require on handover, which was an exceptionally detailed list of documentation required. At the end of his witness statement he confirmed that he would accept the appointment, comply with the code of practice and the RICS code. Annexed to his statement was a draft management order the contents of which we have noted.

15. In brief evidence in chief he told us that in March he had been appointed manager of three flats just off Holloway Road but that this appointment made no difference to his willingness to take on this appointment, if he was so chosen.
16. He said that he had now viewed the Property. Asked about the possibility of managing a small block of flats in the manner in which the Respondents have done so he said that those can work where all parties get on but where in this case there were disputes over bills and accounting and the arrangements by which the Respondent deals with service charges he did not think it would work. He accepted there were limited common parts, no staff and that it was fairly straightforward, although he did feel that no property is that straightforward as there are often small problems that need to be resolved.
17. He told us that there are perhaps four or five properties that he manages of this size. He said that he would visit quarterly. He thought his fees were competitive. He said also that he would in all probability undertake common parts cleaning although would look at the existing arrangements. However, he had a family company who would no doubt be happy to deal with the cleaning if he decided to go that route. Asked about the ability to levy administration charges, he thought that there was a provision in the lease but was not sure.
18. The management order that he had produced was like that in respect of another property, which had similar issues. It was pointed out to him that the terms of the management order removed the rights for the Respondents to carry out certain matters but he said he would not wish the Respondents to be doing work at the Property. He confirmed that he would deal with section 20 issues and would involve professionals to deal with tendering. Initially the fee was 10% for major works but if a surveyor was involved and ran the project then he would reduce that to 5%, their involvement being limited to administration.
19. Asked what his priorities were, he said he thought a fire risk assessment needed to be undertaken, the cracks in the common parts need to be reviewed and subject to findings decoration should take place and carpeting and other works were needed. He said it could take a couple of years to deal with this and asked whether he could make use of Mr Bowden, the Respondent's expert, he said maybe he could do so. He also accepted that it would be possible to split the works into internal

and external matters as the last thing he would want to do is spend money on common parts internally when there were contractors onsite. Reference was made to alterations and sub-letting which he considered someone needed to control. Asked whether he would appoint Mr Bowden as the building surveyor his response was he could not say, as he had not spoken with him before today. If he was suitable, however, he might well use him.

20. He was then asked some questions about the arrangements that he suggested. Asked how he would arrange for funds to be collected in he said he would send out a budget and that it would be helpful to have a start-up cost of say £1,000 per flat. As far as his relationship with the lessees was concerned, he said that this should be open. He would write with details of a meeting that they could hopefully arrange so that they could speak to everybody. He would have an AGM and his annual fee covered this although there was a separate role for company secretary, which is £300 per annum including VAT. He considered a three-year period would be suitable and that he had sufficient insurance and professional indemnity cover and no claims had been made against that. He was investing in IT, which they were at the moment testing and hoped that that would be in place in three to four months. He had a panel of contractors who he would use to deal with issues and also had a complaints procedure and was a member of the Property Ombudsman. His initial budget he said would include fees, insurance, cleaning, communal and external repairs and the health and safety risk assessment. He would also arrange for an insurance rebuild valuation.
21. Following on from Mr Esterson we heard from the first of the surveyors involved in this case. This was Mr Tarling who had prepared a report at pages 62 to 73 of the bundle. His condition survey was dated 11th November following an inspection the day before. He describes the Property and the literature upon which he has relied. He also confirms compliance with the Civil Procedure Rules.
22. His report moves on to deal with the external standard of the Property, noting that a new gas flue has been installed to the first floor flat and the brickwork has not been made good. There are other issues that he notes, for example a tree growing out of a joint between the cast iron and plastic soil vent.
23. Under the heading 'Internally' he states that in his view the interior has been neglected for a number of years with leaks and structural movement. He could not ascertain the reason for that structural movement because of the limit of his inspection. He also raised issues concerning fire safety. He dealt with different levels at the Property and the works he considered may be required. His conclusion contained eight points including the neglect of the communal hallway, lack of regulatory fire reform compliance, the need for an asbestos survey and further investigations into potential structural movement, asbestos and service risers. To his report were appended photographs

showing peeling paintwork to the flank wall and the poorly fitted gas flue. In addition we were provided with internal photographs showing the various cracks and issues that he described in his report.

24. Asked questions by Mr Lees he confirmed that he had the opportunity of reading Mr Bowden's report. He confirmed that his comments were on a 'maybe' basis and that a more in-depth survey was needed to establish the cracking. The fire safety equipment was out-dated. He agreed that a full survey would be required and a level 4 fire risk assessment would be required for the premises, which may require the opening up of certain parts. The asbestos survey would need to be done before there could be any cutting or opening up. He was satisfied there was asbestos there.
25. He was then asked questions by Mr Gallagher and confirmed that he had received instructions from the Applicant's solicitors which were verbal, in essence to go to the premises, inspect the common parts and exterior for disrepair and non-compliance with regulations. He confirmed he had limited access and did not see the rear elevation or the roof. Asked about the first floor flue from the gas, he confirmed it would be for the tenant to repair this but could not say whether consent had been obtained, as he had no idea when the work had been undertaken. Asked about the cracking, he said that to be certain they would need to be monitored but he thought it was structural movement. He accepted he could not be 100% certain that it had not finally settled. He was challenged about the need for a level 4 fire risk assessment.
26. After the luncheon adjournment we heard from Mr Bowden whose expert's report was somewhat hidden amongst the exhibits to Miss Boardman's witness statement. The report at page 469 is dated 1st December 2020. It confirms the instructions and the matters that he has been required to consider, which is the condition of the building, advising on what needs to be done for the common parts, a management plan and refers to the witness statement of Neil Walker who is a neighbour. His report gives his CV and confirmed that as with Mr Tarling he is a chartered surveyor of some standing. We have noted the details. His specialist area appeared to be structural surveys and party wall legislation and procedure.
27. He confirmed that he would give his opinion on four headings. The first was the fabric of the building and he confirmed that he had been involved with the Property since 2013. This was largely to deal with the rights of light affected by development at 21 next-door and 7 Daleham Mews behind. A schedule of condition had been prepared at that stage. He inspected it again on 24th November 2020 and accepted there had been some deterioration since 2017 but not significantly. He told us he concurred with Mr Tarling's report on the question of the external work and generally concurred with the remaining points under that heading. Insofar as the on-going structural movement was concerned his view was that the cracking in the plaster does not show movement as

suggested by Mr Tarling and the most likely cause was progressive minor settlement, which typically occurred in buildings of this age and type. At paragraph 2.12 he says that fire risk assessments had been carried out by Jane Boardman but that one of the properties had been used on an Airbnb basis, which would, he suggested have made it an HMO and subject to more stringent inquiries. In conclusion, he rejects Mr Tarling's views that the structural movements are of concern and that whilst many of his recommendations concerning fire protection and maintenance could be regarded as sensible, they could not be regarded as being required either under statute or the leases unless a qualified fire risk assessor had been involved.

28. At paragraph 3 he accepted the building clearly needed maintenance and his initial thought pending a full survey was that further advice should be obtained regarding fire protection matters as well as an asbestos survey. He then went on to consider the works that should be undertaken to the Property and at paragraph 4 his comments on the management plan were set out.
29. At paragraph 5 he was asked to comment on the statement of Mr Walker but was unsure of the relevance of this person's intervention. We noted the comments that he made.
30. Asked by Mr Gallagher whether he had any comments on Mr Tarling's evidence, he was of the view that the cracking was not structural. He thought that the cracking shown was following conversion and he did not believe that the interior had been decorated since the 1990s. The cracking was in his view old and had not moved significantly when he first took photographs of the interior some five years ago. Those photographs were not produced to us. On the question as to whether these works were major works, he thought they were essentially decorative maintenance but conceded fire safety was not his area of expertise.
31. He thought he would undertake a full survey and that a fire survey should be undertaken.
32. In cross-examination by Mr Lees he confirmed that his specialism involved rights over other people's property and it was on this basis that he had been instructed to deal with works that had been carried out to the neighbouring property of Mr Walker. He was not a regular expert for the Respondents but had been involved in the Property since July of 2017, although not involved in a full survey.
33. He was asked then what he thought about Mr Tarling's CV and accepted that Mr Tarling had more experience with fire safety matters. However, he did not accept what Mr Tarling had to say and had not seen any fire risk assessment. He did, however, think that a fire risk assessment was necessary, as was an asbestos survey.

34. Asked about the conclusion in Mr Tarling's report, he found little to agree although did accept that the carpets would need replacing and that a fire risk assessment should be undertaken, although not one that disturbed the Property.
35. He accepted that he would not be undertaking the management of the building but was proposed to act as the building surveyor. Asked why he accepted that he had no management experience yet was commenting on the management plan, he said in response that the building was in good order although works were needed to the common parts.
36. This concluded the expert witness evidence and the first lay witness we heard from was Mr Walker. He had made a witness statement dated 12th November 2020, which appeared at page 235 of the bundle. It recounted his history of ownership of 21 Belsize Crescent, the neighbouring property. It listed the problems that he and his wife had had with the Boardman/Fletcher family and the impact that that had had on planning matters. In cross-examination it was put to him that he did not get on with Mr Fletcher and Miss Boardman and accepted that that was the case.
37. We then heard from Miss Lee who had made two witness statements at pages 134 and 155 of the bundle and 507 to 510. Her witness statements stood as her examination in chief and we will not go into great details as to what is contained therein. However, we noted that Miss Lee was a solicitor and had acquired her interest in the second floor flat at the Property in 2003. She confirmed that both she and Zoe Wigan were shareholders of the freehold company, she spoke of Mr Fletcher's behaviour and status which she considered were crucial background to the matter but more so as Mr Fletcher is neither a leaseholder or director or shareholder in the Respondent Company. She confirmed that she had moved out of her flat in 2008 but denied any breaches of leases. Reference is made to matters that we do not need to consider in these proceedings following the agreement reached between Counsel.
38. The witness statement does go on to confirm their service charge proportions at page 137, suggesting there had been an over-charge, although she considers this may be because there were no proper service charge accounts, demands or records. The statement goes on to deal with in detail the replies to the section 22 notice made by Miss Boardman, Miss Fletcher and Mr Fletcher. We have noted all that is said. The final paragraph of her witness statement rebuts the suggestion from Mr Fletcher that there will be more efficient governance and full accountability, which in her view constituted an admission that such accountability did not exist.
39. She confirmed in cross-examination that she had been a director since 2003 but did not recall filing dormant accounts for the Respondent. She accepted that she was not paying ground rent but had not been

asked to do so. She indicated that she did not have any knowledge of monies going into accounts administered by Miss Boardman but when works had been done, she had contributed to those. She accepted that Miss Boardman had paid bills, but she said she had undertaken some work as well, for example a repair to the front door, the cleaning of common parts and carpeting works. She could not say how much money she had spent but does not recall being reimbursed. She did tell us that Miss Boardman has asked for reimbursement and that they had paid when so requested. In her view it was in her interest to act as good leaseholders and to facilitate harmony with others.

40. She was asked whether she recalled asking about a sinking fund, but her view was that as no money had been paid in there would be no money in a sinking fund. She did not accept that it was advantageous to pay only when asked. She said she preferred to pay in advance so that she could budget for their costings. She did not recall receiving accounts and that the system run by Miss Boardman and Mr Fletcher did not work for her. It was put to her that she had only heard about issues at some time after the event but that any efforts to address those issues had been met with rudeness. What she wanted was the building to be in good order yet the report showed numerous items needed to be dealt with. She confirmed that if issues were just for example carpeting, then there would not be this application before the Tribunal.
41. There were concerns about insurance details as all communications had to go through Mr Fletcher and she was forbidden from dealing with the brokers. In the end she took matters into her own hand to get information as she was nervous that they did not have the right cover for the Property.
42. Asked about the appointment of a manager she accepted that he would make decisions and that that might be disadvantageous to all. However, it would be an improvement over where both she and Miss Wigan found themselves at present. In her view there was a deadlock. Mr Fletcher had not shown that he had the proper skills to manage the Property and they wanted an independent trustworthy person who represented the tenants and preserved the freehold.
43. She said she had tried to work with Mr Fletcher, but the trust had gone. In respect of Mr Bowden her view was that his position was not tainted just because he worked for Mr Fletcher, but she was also concerned about comments made about herself and Miss Wigan. She said she had worked with people put forward by Mr Fletcher but had not had a good experience. In fact, the experience they had had generally was with Connaught who had been instructed by Mr Fletcher to undertake most of the work at the Property. Her view was that the relationship she had the Fletcher family was not harmonious and that if a manager was appointed matters would improve. It was put to her that there would be substantially increased costs, which she appreciated. She said she wished she was not here and that they could have worked together but

that was not possible. The offers made by the Respondent in a letter from Child & Child did nothing to address the deadlock.

44. Her view was that appointing a manager would break the deadlock between the parties and that after a period of stability when they were not at loggerheads, it could well be that the building could be managed differently. However, if the matters continued as they are, there will be no way forward and she did not consider the Property could be successfully managed.
45. She was referred to a letter from Coleman Coyle dated 3rd April 2021 which contained proposals which included the creation of a separate trust account, service charge recoupment strictly in accordance with leases and the appointment of Mr Bowden as an independent surveyor. Miss Lee's response was that whilst they had considered the proposals they did not deal with the deadlock.
46. It was then put to her that the building management plan prepared by Miss Boardman appearing at pages 465 onwards was the proposal that she could accept but she did not consider again that it would remove the impasse and that Miss Wigan and herself had made proposals to resolve the matter, but this had been rejected. She confirmed that they had tried to sit down with the Fletcher family but that had not been successful, and this was why they were before the Tribunal. She was then taken to minutes of a meeting held on 14th September 2019 which was a Saturday. Neither her nor Miss Wigan was present. A section 20 notice was subsequently issued, and the response given by Miss Wigan is recorded at page 395. Miss Lee's view was that there were many events, which had not progressed which had led to this application. The meeting recorded at page 388 was not one that they attended, as they had never received notice of same. They had put forward another surveyor to act and she disagreed that they were being obstructive.
47. After she had given evidence, we heard from Miss Wigan. Her witness statement supported the statement made by Miss Lee and Mr Gallagher confined his cross-examination to the additional points. She confirmed that there were no matters that she materially disagreed with Miss Lee.
48. It was put to her that Miss Fletcher, a newly qualified physio, would not be able to afford the appointment of a manager. Miss Wigan's response was that they had offered to contribute towards the management costs, but it had not been accepted. She denied that her flat was a commercial money-making asset. She accepted that there had been some Airbnb lets but Sarah Fletcher had also undertaken such lettings. She said she had raised concerns with Mr Fletcher, but he had told that it was fine to carry on and that she took Mr Fletcher at his word. She therefore started to let through Airbnb as it gave her the chance to be able to use the flat and to enable her daughter to see her father. However, she stopped letting it out on that basis.

49. On the question of insurance, she confirmed that there had been lengthy email exchanges with Mr Fletcher, which she considered had been arranged to enable his daughter to undertake Airbnb lettings. She wished to find a solution to the insurance arrangements and did not trust Mr Fletcher to deal with it. She tried to contact the broker, but they initially refused to speak with her. Her concern was that Mr Fletcher was acting in his family's interest and she merely wanted to be sure that the flat would be covered.
50. As with Miss Lee she was referred to the letter Child & Child written in April of this year. She was of the view that the proposals put forward were unacceptable. She told us that some time ago they had approached a surveyor to undertake works and suggested that he would have the day-to-day management. However, Mr Fletcher did not accept this and instead was pushing forward the family agenda and was concerned that this would happen again. She did not consider Mr Bowden to be independent and that her wish was to avoid litigation and accordingly things need to be undertaken properly and the Property run and maintained appropriately. Asked about the management plan prepared by Ms Boardman she did not think it was a plan. It was an over-simplification and matters would not progress. She referred to an email, which was somewhat abusive. In her view it was an unpleasant relationship that they had with the Fletcher family.
51. That concluded the evidence for the Applicants, and we heard first from Miss Fletcher whose witness statement was at page 258 of the bundle running to page 266. She confirmed that she had been a director of the Respondent Company since September 2010 and had lived at Belsize Crescent since her birth. She considered that both she and her parents had a personal attachment to the upkeep of the Property and that comments about the management of the building were without foundation and failed to recognise the hard work put in by her parents. Her witness statement exhibited several emails the contents of which were noted. She confirmed that by April of 2019 the Applicants had indicated that lawyers were to be involved but she had attempted to resolve the situation without lawyers suggesting instead a meeting. However, that was rebuffed on the basis that the Applicants did not appear to consider there was anything new to discuss and accordingly that did not take place. A meeting did, however, take place in December of 2019 where there were discussions concerning the extension of the lease and the appointment of Wayne & Silver as managing agents. Apparently, a meeting took place with Mr Wayne, but they discovered that the contract was open-ended, and the matter did not progress. In examination in chief, she was asked how the costs of the appointment of a manager would affect her. She said that this would be a huge additional cost adding perhaps £75 a month which would eat into savings.
52. In cross-examination whilst accepting that there was a breakdown in the relationship this was, she said a two-way street and she thought the Applicants should trust that they had the best intentions for the

building. Asked whether she thought because her family were owner occupiers that gave more sway, she denied that that was the case. Her view was that her parents took responsibility for the Property. Indeed, her partner and her picked up rubbish and vacuumed the common parts. Also, she saw the tenants of Miss Lee often walk over post which she then picked up.

53. Asked about the relationship her parents had with Connaught, she responded that her understanding was that any workmen would be possible but that her family had a relationship with Connaught and knew the directors. Any contractor would require access and the Applicants were not at the Property to help them find a trustworthy contractor.
54. Asked about the involvement of Wayne & Silver, she was concerned that they had wanted a long period of management and that there was a concern that they would not be able to extract themselves from the agreement. Her view was that everybody wanted the same thing, but it was not possible to come to an agreement as to the decorating of the common parts or day-to-day management and insurance. However, she did not think there was any deadlock on the day-to-day management. Instead, her view was that matters would continue as they were without having to pay the fees. Her position was that decisions needed to be made for which they needed assistance in respect of the decorating of the common parts. She was open to have a third-party deal with that but was concerned about the impact on her income. Asked about the relationship with the Applicants her response was that she did not believe that her family had a problem with Miss Lee and Miss Wigan but rather they had a problem with the family.
55. Asked about the enfranchisement application that had been made, she told us that this was a form of compromise. She believed they were driven to the enfranchisement option because of the dispute.
56. She confirmed that there was no mortgage on the Property and that she did not pay a ground rent.
57. We then heard from Miss Boardman who had made a lengthy witness statement with a number of exhibits starting at page 270 of the bundle. She told us in her witness statement that she had been a director of the company after it was incorporated in 1985. Her husband, Mr Richard Fletcher is the company secretary, and her daughter Sarah is also a director. Her witness statement described the building and the history of acquiring the freehold.
58. Her witness statement said that from the outset they had wanted to manage and control the building themselves as resident owner occupiers as they had had poor service from a non-resident freeholder who had shown little interest in maintaining the building. She confirmed the leaseholders had had no interim service charge demand nor paid management fees. Further, there was no reserve fund so no

need for a separate company bank account. In exhibits she listed works that had been undertaken at the Property since 1985. We noted all that was said. Reference was made to restoration of render and repainting to the first floor in 2011, rendering to the front in 2013 and subsequent works. The witness statement went on to deal with attempts made to break the impasse, which had not proved possible. She confirmed in her statement that both she and her daughter were vigorously opposed to the appointment of a managing agent. She considered it would be intrusive and an unnecessary expense.

59. She dealt with fire safety issues and the collective enfranchisement position. Reference was made to the management plan that she had prepared. Her view was that rather than go to the expense and the unjust, unfair, and unreasonable appointment of a manager, instead the directors should appoint Mr Bowden to act as building surveyor and proceed to deal with the works accordingly.
60. In cross-examination she agreed that there was an impasse but that she thought this was largely brought about by the Applicants. Her view was that the appointment of a manager would create a huge extra layer of cost. She did not have the money to pay for this and did not want a managing agent. She confirmed that over the years there had been an informal arrangement concerning the running of the Property. In that time both herself and her husband had washed walls, scrubbed steps, taken rubbish out and looked after the Property as though it were their own house.
61. Asked about Mr Esterson she said that she had several problems with him and would veto his appointment. She confirmed that work needed to be done which she said had been vetoed by the Applicants.
62. After Miss Boardman had given evidence, we heard from her husband Mr Fletcher who had also made a witness statement, which was at page 243 of the bundle. He was asked whether he thought Mr Esterson's suggestion of £1,000 for starting the role as manager was appropriate. He thought it was a bit on the light side. Insurance at £4,000 was due in June and so he thought that £3,000 per flat would be more appropriate. He accepted that it might take a while for the works to be completed but that if Mr Bowden were employed, he could start straight away. His view was that if the common part works were undertaken by themselves, they could be finished by the autumn. He hoped that the enfranchisement claim would have been dealt with so that the appointment of a manager could then be challenged.
63. In cross-examination he confirmed that he was not a manager but was Company Secretary and simply an adviser to the Respondent. He was referred to paragraph 19 of his witness statement, which explained the proposal for enfranchisement and the intention to appoint Mr Bowden as building surveyor and consultant. Asked why they did not want a manager he indicated that it was costly, intrusive, and poor value for money. Asked why in the response at paragraph 25 reference was

made to their willingness to appoint an independent manager by consent, he said that this had been included on the advice of his solicitor. In their view an independent manager would be Mr Bowden. They were he said prepared to negotiate with Mr Wayne and Silver who were not RICS appointees, but the agreement was for too long. He confirmed he was not prepared to accept a statutory appointment and the management plan put forward by his wife would be the appropriate way forward when the freehold was acquired. He did, however, accept that that proposal was superseded by the offer set out in the letter from Child & Child dated 3rd April 2021. His view was that the Applicants were negotiating any issues on the basis that they would be able to go the Tribunal to get a Tribunal appointment. His view was that they should have serious negotiations without one hand held behind their back. This was silly. There was a huge commercial interest and that should take paramount importance.

64. Following the conclusion of Mr Fletcher's evidence, we had submissions. The first was from Mr Gallagher. His opening submission was that the position had become starker and more focussed. It was not a case of detail, and he was not going to cover evidence going to and fro but instead would address where this case rests at the conclusion of the evidence. He accepted there was a deadlock, at least insofar as the repair to the common parts were concerned. This could be solved by the Tribunal but not necessarily by the appointment of a manager. The appointment of a manager would not solve the disharmony but may alleviate the Applicant's sense of grievance. However, that will leave the Fletcher family feeling aggrieved with a sense of injustice. His view was that the Fletcher family had effectively managed the Property for several years at little unnecessary expense. The imposition of a management order would take away their management of their own home and was highly intrusive. Further, the order appointing a manager would prevent them from undertaking small works such as scrubbing walls, vacuuming common parts, sweeping upstairs and clearing gutters. There would be an intrusion both of builders and inspections into their home life, which would not promote harmony but just create a deep sense of grievance. In his view the day-to-day management of the building was not deadlocked. Basic works were carried out and the matter was ticking over. It was the major works to the common parts which had caused the problem. It is a simple building to deal with day-to-day matters and the proposals put forward by solicitors in their letter of 3rd April 2021 were offers that were reasonable.
65. We were reminded that the Applicants do not live at the Property, but it is a home to the Fletcher family who have a property interest. The Applicants needed to be assured that the Property was safe, structurally sound and the common parts in reasonable decorative order. These works will not lead to a deep-seated sense of disagreement provided there is a reliable alternative. The alternative he said lay in the letter from Child & Child. He submitted that since April of 2019 such negotiations as had been carried on were against a backdrop that if

agreement was not reached then the Applicants would apply to the Tribunal for an appointment of manager. Accordingly, the negotiations on that basis were from the Fletcher's point of view as if they one hand tied behind their back. The Tribunal must do something but should dismiss the application and send the parties away to negotiate.

66. In response Mr Lees said that there was a certain taint of tragedy if not a competition of misery. Something had to be done. The issues had been narrowed. It was no longer necessary to establish a breach, as the gateway provisions had been open for an application under section 24 of the Act. There were substantial difficulties with the common parts including the fire risk survey, asbestos survey, and a general building survey. The company could not function as it presently stands. He asked us to accept the evidence of Mr Tarling in preference to Mr Bowden. No submissions were made as to the lack of suitability of Mr Esterson. He had expertise and was local to the Property. There was no criticism of his fees, which in Mr Lees' view were the industry standard. An appointment of three years would give sufficient time for matters to be undertaken. In his view there was no doubt about the Applicant's credibility unlike that of Miss Boardman who he suggested was blinkered.
67. There were obvious points that lead to the application. There was a breakdown of trust, there was a division between the Fletcher family and the Applicants, which led to a deadlock, which there was no lawful way to break. There was inherent appetite for compromise. This was not just about common part works but the extent of those works, how they were undertaken, and which contractor would need to be determined as also who would supervise. This could not be done by the Respondents. If the application were dismissed, then there would have to be further negotiations. However, if the application for enfranchisement went forward then there would be a different arm behind someone else's back. There was no evidence before us that a different outcome would be reached. It was perverse he said for us not to make an order on the basis that this will make the parties negotiate. The Applicants would not accept the proposals contained in the Child & Child letter and therefore the Respondents could not put that into effect. He did not consider that suspension of any managing agent's appointment would work. There is no doubt that works needed to be addressed. Serious litigation was in the offing over the lease extensions that had already been granted and the collective enfranchisement that is underway. We were reminded that management orders can be made in circumstances such as was present here.
68. He reminded us that the common parts are not the Fletchers' flats. It is right that the costs will increase but those were not criticised nor was an alternative put forward. Mr Esterson had agreed that the fee should be fixed for three years and was prepared to drop his fees for managing works in some cases.

69. In response Mr Gallagher said that the term of the order should be for one day less than three years if it was to be made and a possible start date of 1st June was suggested.

FINDINGS

70. It is accepted that part of the Tribunal's jurisdiction is to solve problems. It is quite clear that there is an impasse between the Applicants Miss Lee and Miss Wigan and the Fletcher family, including of course Miss Boardman.
71. In reaching our decision we have considered all that we have been told and have read.
72. A review of the experts' evidence leads us to the conclusion that we preferred much of Mr Tarling's submissions and report to those of Mr Bowden. Mr Bowden was somewhat dogmatic in his views that the cracking was not a serious structural matter but did concede that a survey would be beneficial. He did not appear to have the knowledge that Mr Tarling had in respect of fire issues. We did not consider that Mr Bowden's report showed any prejudice against the applicants but there is no doubt that he has had a relationship with the Respondent Company and the Fletcher family for a few years, although his expertise does not lie in the scale of works that will be required to bring this property back to good order.
73. As far as the witnesses were concerned, we found all five to be genuine in their concerns. It is indeed a great pity that there has not been a way forward found that could avoid the need for this application. However, we are where we are.
74. Insofar as the Fletcher family were concerned, we do have some sympathy with their position. However, their concerns as to the intrusive nature of any order that might be made seem to us to somewhat over egg the pudding. The fact that there may be cleaners brought in to attend to the common parts seems to us to be a good thing. It is not necessary for Miss Fletcher to have to clean and Hoover and with respect to Miss Boardman and Mr Fletcher they are mature individuals and the thought of them carrying cleaning equipment up the stairs is not something that seems to us to be realistic. In addition, the suggestion that Mr Fletcher would be able to maintain minor maintenance works to the Property including gutter clearance again seem to us to be somewhat fanciful. These are matters where health and safety considerations are important.
75. As we have indicated there is an impasse and that impasse needs to be broken. It seems to us the only way that that can be done and to ensure that works are undertaken to Property in a timely fashion is to appoint Mr Esterson as a Tribunal manager. We do not do so lightly. We appreciate it is a draconian step. We do understand that Miss Fletcher and her parents live at the Property and have done for many years. In

contrast the Applicants do not presently live there and their plans as to the future ownership provisions are not known.

76. We would hope that in appointing Mr Esterson under the terms of the order annexed hereto, it could take some of the heat out of the situation but most certainly enable the common parts to be repaired and put into good order, which must be a good thing for all concerned. There are some external works that will need to be dealt with, not least of which is the positioning of flue through the exterior wall, which we consider is probably the responsibility of the flat owner to make good. This is a pleasant property of worth and the works to the common parts should do nothing other than to increase the value.
77. We would recommend to Mr Esterson that without any disparaging thoughts insofar Mr Tarling and Mr Bowden are concerned, that he uses neither gentleman to undertake a survey of the Property. Unfortunately, we think that the use of one or other will only cause issues with the parties and a fresh face and fresh mind to the problems would we think be a good way forward.
78. We should perhaps mention in passing, although it was not an issue that was raised to any degree before us, that the attempt to enfranchise by Miss Fletcher and Miss Boardman was clever but unhelpful. The same could be said with the granting of long leases to themselves. Whether the enfranchisement proceeds or not or whether the leases are overturned, or the Applicants are granted leases in similar terms is for somebody else to consider. It did, however, point us in the direction to grant the order in this case as it did tend to show that there was a desire on the part of the Fletcher family to preserve their position potentially to the detriment of the Applicant. We are hopeful that the creation of an order for management by Mr Esterson can resolve those issues and that he is allowed to utilise the term of the order to resolve the problems that clearly afflict the Property.
79. The other matter that we must consider is the question of section 20C costs. Mr Gallagher for the Respondents openly indicates that there does not appear to be any contractual entitlement under the lease for the Respondent to recover the costs. This is supported by Mr Lees in his skeleton argument. Given the findings that we have made we think it would be inappropriate for the Respondent to be entitled to recover the cost of these proceedings as a service charge and therefore finding it just and convenient so to do we make an order under section 20C of the Landlord and Tenant Act 1985.
80. Finally, we hope that matters will progress and that the issues that currently blight the Property will be resolved because of our appointment of Mr Esterson. We would ask the parties to please work with him to enable matters to be dealt with within the timescale of the order. Whether he continues once the order has finished or an application is made to extend it is not something that we can comment upon. We would just briefly respond to Mr Gallagher's suggestion that

somehow the order should be stayed pending the outcome of the enfranchisement claim. All we would say to that is that there is no certainty that the enfranchisement claim will progress but what is certain is that the condition of the Property will continue to deteriorate. In those circumstances we do not consider it appropriate for any stay to be imposed in connection with the commencement of the order.

81. We apologise to the parties that we have not been able to deal with our decision until now. In those circumstances we find that it would be appropriate for the order to commence on 1st July 2021 and as suggested by Mr Gallagher it should run for a period of three years less one day. This is set out in the order annexed.

Tribunal Judge Dutton

8 June 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate personal professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondent or the Tribunal.
2. By 1 July 2021, the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicants and the Respondent shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund).
3. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon 1 July 2021 become rights and liabilities of the Manager.
4. The Manager shall account forthwith to the Respondent for the payment of any ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.
5. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of Functions and Services attached. Further the parties shall pay to the Manager as an interim service charge the sum of £1,000 within 28 days of the date of this order.
6. By no later than 31 June 2022, the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the property up to that date, providing a copy to the lessees of the Property and the Respondent at the same time.
7. Within 28 days of the conclusion of the management order, the Manager shall prepare and submit a brief written report for the Tribunal, on the progress and outcome of the management of the property up to that date, to include final closing accounts. The Manager shall also serve copies of the report and accounts on the lessor and lessees, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new tribunal-appointed manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.
8. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- (i) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (ii) Set demand and collect ground rents, service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (iii) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- (iv) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- (i) Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the Manager.
- (ii) Maintain efficient records and books of account which are open for inspection by the lessor and lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.
- (iii) Maintain on trust an interest-bearing account/s at such bank or building society as the Manager shall from time to time decide, into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.
- (iv) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

- (i) Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.

- (ii) The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondent and the lessees.
- (iii) The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.
- (iv) Instruct a Building Surveyor and or such other qualified expert to provide a condition report in respect of the Property, to include Health and Safety issues, Fire Protection issues and an asbestos survey and to implement any works recommended within a reasonable time span.

Fees

- (i) Fees for the abovementioned management services will be a basic fee of £4,000 per annum inclusive of VAT to be apportioned in accordance with the provisions of the parties' leases. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.
- (ii) Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a charge of 10% of the cost. Subject to a reduced fee of 5% if the day-to-day management is undertaken by another. This in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.
- (iii) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee at an hourly rate of £150 inclusive of VAT.
- (iv) VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- (v) The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for a time basis.
- (vi) The manager will act as company secretary at a fee of £300 per annum including VAT.

Complaints procedure

- (i) The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.