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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/18UC/LDC/2013/0041 CHI/18UC/LBC/2013/0030 CHI/18UC/LAM/2013/0010 CHI/18UC/LSC/2013/0018
Property:	66 Pennsylvania Road, Exeter EX4 6DF
Applicant:	Ms S Sokolowski and Mr R Compton
Representative:	Ms S Sokolowski
Respondent:	Willowsford Property Management Company Limited
Representative:	Mr N Horton (Ms S Boothby and Ms K Gwynne)
Type of Application:	Section 27A of the Landlord and Tenant Act 1985 (Liability to pay service charges) Tenants' application for the determination of reasonableness of service charges for the years 2013 and 2014. Section 24 of the Landlord and Tenant Act 1985 (Appointment of a Manager)
Tribunal Members:	Judge A Cresswell (Chairman) Mr WH Gater FRICS ACIArb
Date and venue of Hearing:	16 December 2013 at Exeter Magistrates' Court
Date of Decision:	24 December 2013

DECISION

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CHI/18UC/LBC/2013/0030
CHI/18UC/LAM/2013/0010
CHI/18UC/LSC/2013/0018

The Application

1. On 3 July 2013, Ms S Sokolowski and Mr R Compton, the owners of the leasehold interest in Flat 3, 66 Pennsylvania Road, Exeter, made an application to the Tribunal for the determination of the reasonableness of the service charge costs claimed by the landlord, Willowsford Property Management Company Limited, for the years 2013 and 2014. On 25 June 2013, the Applicants made an application for the appointment of a Manager.

Preliminary Issues

2. There were 2 further applications made by the Applicants, being for the dispensation of consultation requirements under Section 20ZA of the 1985 Act and in relation to a claimed breach of covenant under Section 168 Commonhold and Leasehold Reform Act 2002. Both of these applications had been withdrawn prior to the hearing and were dismissed by the Tribunal at the hearing.

Inspection and Description of Property

3. The Tribunal inspected the property on 16 December 2013 at 1000 hours. Present at that time were Ms S Sokolowski, Mr R Compton, Ms S Boothby (Flat 1) and Mr N Horton (Flat 2). The property in question consists of a period detached large house converted horizontally into 3 flats, the ground floor flat having also the front and rear garden and all 3 flats sharing the front path and the storage space at the side of the house. A flat roof covered Flat 1 and is used by Flat 2 for recreation. Flat 1 extends out at the ground floor beyond the main part of the house and consequently has the flat roof.

Summary Decision

4. This case arises out of the tenants' applications, made on 3 July 2013, for the determination of liability to pay service charges for the years 2013 and 2014 and of 25 June 2013 for the appointment of a Manager under Section 24 Landlord and Tenant Act 1987. The Tribunal has determined only those issues brought to its attention by the parties. The Tribunal has determined that contributions to the service charge should be in accordance with rateable value; that the cost of the work to the back fence is not recoverable as a service charge; that the cost of the external decoration cannot be challenged; that the repairs to the flat roof are payable as part of the service charge by all lessees in accordance with rateable value.

5. The Tribunal has determined that Mr Philip Muzzlewhite is to be appointed as Manager for an indefinite period on the basis of a Management Order, which is detailed below our determination.

Directions

6. Directions were issued on 13 August 2013. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.

7. This determination is made in the light of the documentation submitted in response to those directions and the evidence of the parties at the hearing and the submissions made at the hearing.

The Law

8. The relevant law is set out in sections 18, 19, 24 and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.

9. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

10. The relevant law is set out below:
Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

Section 18 deals with the meaning of "service charge" and "relevant costs"

Section 19 details the limitation of service charges and reasonableness.

27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,

(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration
agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject of an application under subsection (1) or (3).
(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

***Section 24** (1) A leasehold valuation 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) A leasehold valuation 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 to be made...
ac) where the tribunal is satisfied-
(i) that any relevant person has failed to comply with any provision of a code of practice approved by the Secretary of State under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and
(ii) that it is just and convenient to make the order in all the circumstances of the case; or
b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

Ownership and Management

11. The Respondent company is the landlord and owner of the freehold. Each of the 3 flats at the property holds a third of the shares in the company and has equal voting rights within the Respondent company. There was some confusion as to who the actual directors of the company are at present, but that confusion does not require resolution for the purposes of this determination.

The Lease

12. The Tribunal was told that there are three forms of lease; the leases are of a common base, with slight variations in the leases of Flats 1 and 2. The Applicants hold Flat 3 under the terms of a lease dated 29 October 1985, which was made between David Kevin Alfred Powell and Helen Jennifer Powell as lessors and David Charles Cross and Margaret Jean Cross as lessees. Clauses of the leases relevant to the issues in the determination are detailed later.

13. **Contribution Formula**

The Applicants submitted that the correct shares of any service charges should be 42% for Flat 1, 34% for Flat 2 and 24% for Flat 3 in accordance with the rateable values of the flats as required by Clause 14 of the Third Schedule of the Lease. Ms Sokolowski explained how she had obtained the rateable value shares from South West Water, they being RV 266, RV 219 and RV 157 respectively. She pointed to the company minutes of 30 September 1988 where the percentages proposed by her were also recorded.

The Respondent indicated that an accurate mathematical calculation using the RV figures led to shares of 41.433%, 34.112% and 24.454%.

The Tribunal was told by both parties that they would be prepared to accept that the Respondent's calculation was correct. The Tribunal indicated that it would apply its own calculations to the RV figures. In the event, the Tribunal's calculation led to a very small change to what was agreed and reflects the requirement for the 3 figures to aggregate to 100%. Accordingly, the Tribunal finds that the contributions formula for service charges is correctly 41.433% for Flat 1, 34.112% for Flat 2 and 24.455% for Flat 3.

14. **The Back Fence**

The Applicants argued that the fence at the rear of the property was the responsibility of Flat 1 and not a responsibility shared by all lessees. Ms Sokolowski pointed to the Fourth Schedule of the Lease for Flat 1

The Respondent indicated its agreement that there had been a lack of clarity in relation to the plans which formed part of the lease of Flat 1, which the company had not been aware of when it made the decision to fund this project, which included a replacement fence and provision of a gateway within that fence opening on to the parking area beyond the perimeter of the Flat 1, adjoining a rear service road beyond the property. Mr Horton indicated that the company had believed the fence to be the rear boundary and said that Mr Compton, who had been absent from the meeting when the project was agreed, had received the minutes and made no objection at that time. He stressed that the decision had been made in good faith.

The Tribunal found from its examination of the leases that "*boundary structures which are not the responsibility of the demised premises*" are within the responsibility of the lessor under the Fourth Schedule to the lease, clause 1(a). Lessees are only required under the lease to contribute to costs incurred by the lessor in performance of the covenants upon the lessor detailed in the Fourth Schedule. "*Boundaries*" is a term first used in the preamble to the lease at clause (1) to mean the boundaries of the site, which is edged red on the lease plan. The lease for Flat 1 does not make explicit the responsibility of the lessee of Flat 1 to maintain the rear fence, the boundary of the Flat 1 demise. The fence is the boundary of the demised flat, not of the site or property, the boundary of which lies beyond the parking space, which itself is beyond the fence. There is a boundary structure of the property at its front and at the side facing into Exeter, which the lessee of flat 1 is not required to maintain (A to F on the plan) because there is no specific requirement to do so in the lease, whereas other boundaries are specified. The Tribunal accepts that there could be arguments both ways as to fairness; it is clearly in the interests of all lessees that there be a secure fence at the rear or a secure rear boundary, but the fence does make private the garden to flat 1, and flat 3 has no parking space. There does appear to have been a mistake made when the leases were drawn up as there is no specific mention of the rear fence (assuming it existed when the original plan was drawn, possibly when the property was built), but it is clearly the boundary line of Flat 1 and not the boundary of the property, which boundary is at the outer edge of the parking area. It follows from the above that costs of the back fence and gate cannot be demanded from the Applicants.

15. **External Decoration**

The Applicants submitted that in April 2012, when the Respondent had agreed to take forward the external decoration of the building, there had been insufficient company funds which had led to individual lessees being asked to pay for the works. Mr Compton had wished to wait until there was a sufficiency within company funds, but a meeting of the Respondent company determined that the works would go ahead and that Mr Compton needed to make a payment. In the event, Mr Compton had taken out a loan and the works had gone ahead. In March 2013, the Applicants had discovered that the proportion of the costs required of them, i.e. one third, did not accord with the terms of the leases, i.e. rateable value, and they sought a refund from company funds for the difference between the 2 proportions. It was at this time that relationships broke down between the lessees, with the Applicants on one

side and the lessees of Flat 1 and 2 on the other side. The Applicants confirmed that no issue was taken with the cost or the quality of the works undertaken.

The Respondent indicated that the account given by the Applicants was incorrect and that Mr Compton had been involved in the planning for the works and the agreement that each of the lessees would make a payment and that it was only as the work was about to commence that an objection was made. Mr Horton pointed to a historic understanding at the property that maintenance was charged in equal one-third proportions. Until pointed out by the Applicants, the other lessees had not been aware of the requirement in the leases of a division on the basis of rateable value. Mr Horton submitted that Mr Compton was the longest standing director and resident at the property and that company records illustrated equal contributions to the maintenance pot for a significant time, with record being found only in the early years of the 1980s for a split on the basis of rateable value. Mr Horton indicated that an equal division had been the norm for a decade at least. It had been agreed at a meeting on 22 April 2012 by all parties that the lease requirement of £40 per month towards maintenance would be insufficient to meet a schedule of works produced and costed by Mr Horton and that each flat would from then contribute £70 per month to the company maintenance reserve. Mr Horton argued that there should not be a retrospective change to the proportions charged in relation to the £4790 involved in the decorative works given the history of agreement and practice of one-third equal shares and what actually preceded the works.

The Tribunal was sympathetic with the arguments put forward by the Respondent. It was apparent that works had been split on the basis of rateable value for some time and then more recently for a period of at least 10 years on the basis of equal shares, and apparent too that the disparity between the practice of charging in equal shares and the clear requirements of the lease had become known to the lessees of Flats 1 and 2 only after Ms Sokolowski obtained an interest in Flat 3. Service charge demands can only be made in accordance with the terms of a lease and are payable only in accordance with the terms of a lease. Whilst the Tribunal recognises that parties may agree to operate on a basis inconsistent with the terms of a lease, there is always the danger, as demonstrated in this case, that a "new" party will insist on adherence to the strict terms of the lease.

In accordance with Section 27A (4) of the 1985 Act (see above), "*No application under subsection (1) or (3) may be made in respect of a matter which (a) has been agreed or admitted by the tenant.*" Here there is evidence that Mr Compton did agree that payment should be on the basis of equal shares. He was recorded as being at the meeting of 22 April 2012 when it was implicit that charges would be apportioned on the then accepted basis of equal shares for the external painting. A subsequent written communication from him noted that he did not wish to make any alterations to the minutes. Subsequent communications support the concern that Mr Compton had about committing to works before there was sufficient in the company pot, but Mr Compton was content for the work to be undertaken and to pay an equal share. It was only on 18 February 2013, after Ms Sokolowski bought a part share of Flat 3, that Mr Compton indicated that a solicitor had noticed the disparity between the working arrangement of equal shares and what was required by the lease (rateable values). The Tribunal has concluded that, in relation to the external decorations, Mr Compton did agree that the works would go ahead on the

basis of equal shares and made payment on that basis, such that the application now to disallow that basis of apportionment retrospectively cannot be made. This is not simply a payment made, but a course of conduct where Mr Compton was a full party to the decision making process and where the other parties followed a procedure for charging which Mr Compton was operating for years before they acquired ownership of their flats.

16. **The Flat Roof**

The Applicants indicated that there had been discussion of water ingress through the flat roof above Flat 1 in a September 2012 company meeting. Quotations were to be discussed in March 2013, but that meeting had broken up in some disharmony and the Applicants had not been in attendance at a meeting in June 2013. The works to the roof had, accordingly, been completed without the participation of the Applicants. It was the contention of the Applicants that the roof above Flat 1 was not in any way the responsibility of Flat 3. Ms Sokolowski argued that the roof provided no support to Flat 3 and was actually a part of Flats 1 and 2.

The Respondent argued that a correct reading of the leases indicated that all lessees had responsibility for the roofs of the building as the flat roof is a subsidiary roof of the building and it is to the benefit of all who live in the building that that roof is maintained.

The Tribunal found from its examination of the leases that there was a rather simpler answer in what is not a very user friendly lease. In accordance with clause 14(ii) of the Third Schedule, "*Expenditure incurred for the benefit of all flats in the building shall be borne by the Lessees of all flats in proportion to the rateable value of their respective flats.*" This is further advanced later in the same sub-clause: "*provided that expenditure in respect of clause 1(a) of the Fourth Schedule shall be deemed to be for the benefit of all of the flats.*" Whilst the repair of a leaking flat roof above Flat 1 may be more to the immediate benefit of Flat I (leak fixed) or Flat 2 (amenity protected), it is beyond argument that making the structure watertight is for the benefit of all lessees in the property, with the result that all should pay for the work in accordance with rateable value proportions in accordance with the lease. The only sensible reading of clause 1(a) of the Fourth Schedule of the lease (the lessor's covenants) is a requirement by the lessor to "*maintain in good and substantial repair and condition*" "*....subsidiary roofs.....of the property*". The subsequent reference to "*boundary structures which are not the responsibility of the demised premises*" is clearly to differentiate such as the boundary structures between A and F discussed above from the requirement on the lessee of Flat 1 to maintain some of the boundary structures, and the words: "*which are not the responsibility of the demised premises*" are not meant to apply to all that goes before them. It follows that all lessees are responsible for the reasonable costs of the repairs to the flat roof. It was not contended that the cost of these works was unreasonable; a proportion in accordance with rateable value is properly payable by the Applicants.

Consideration and Determination of Appointment of a Manager

17. The application for appointment of a Manager was based primarily upon the disappointing state of affairs currently experienced by the parties, which involves a complete breakdown of communication between the lessees of Flat 3 and the other

lessees. The Applicants suspect that they are without influence in the maintenance of their home because they would always be outvoted by the majority vote of the other 2 flats. The police were called to a company meeting and have been called to and involved in other incidents and issues at the property since then.

18. Ms Sokolowski also had concerns about the banking arrangements. The parties agreed during the course of the hearing that the present arrangement with Nationwide was not ideal and that better banking arrangements were required. There was some dispute about whether the Applicants had been offered the opportunity to be signatories to the company account, but this appeared to the Tribunal to be a matter easily resolved. There was also some dispute as to which lessees were actually lawful directors of the Respondent company, which again is of concern but should be a relatively simple issue to resolve.

19. Ms Sokolowski also had concerns that what should have been an ornamental garden for Flat 1 now had a driveway from the gates within the rear fence, which the Applicants viewed as a breach of covenant. Ms Boothby argued in turn that the driveway was a "green" driveway which was not used for the parking of a car (she and Flat 2 had parking spaces at the rear) but which had been used to facilitate contractors for the good of the whole building and that the garden remained an ornamental garden; she further submitted that there had always been access via gates at the rear. This claim had formed part of one of the applications which had been withdrawn and which the Tribunal dismissed.

20. The Applicants were also concerned that a bike shed which they had installed with the consent of the Respondent following a theft of bikes in December 2012 had been ordered to be removed some 7 months after its construction with only 3 days notice. Mr Horton indicated that consent had been given to the construction of the bike shed but on the understanding that the Applicants obtained any consent necessary from regulatory bodies and the neighbours. Whilst Ms Sokolowski told the Tribunal that she had been told that legal advice led her to believe that the Applicants could erect their shed, the Tribunal was not at all surprised that the neighbours would raise concerns because the shed was sited adjacent to the neighbour's window and was surprised that the Applicants had not discussed the shed's erection with that neighbour.

21. The Respondent believed that it had demonstrated an ability to manage properly the requirements of the property, having developed a schedule of works and by putting arrangements in place for that schedule to be taken forward. The Respondent was concerned that it would be effectively penalised by having to pay the costs of a Manager, some £900 + VAT in total, when it had always acted in good faith and that the appointment of a manager would be another layer of bureaucracy which is not necessary.

22. It was clear to the Tribunal that there was here a complete and apparently, at present, irretrievable breakdown in the relationships between the parties. Mr Compton apologised at the hearing for his ill temper at the March 2013 company meeting; it was apparent that the disharmony is having some effect upon his health.

The Tribunal saw some medical and other evidence to that effect. After such a short hearing and having heard two quite disparate accounts of how a situation of such disharmony could have arisen between decent people sharing the same living space, the Tribunal does not wish to lay blame at the door of either party. What is clear, however, is that something needs to be done so that all parties can live in one property trusting that they have a measure of involvement and control of the maintenance of that property.

23. The Tribunal read a communication from Mr Philip Muzzlewhite and heard evidence from him. He told the Tribunal that he manages the next door property and that he has 40 years involvement in the leasehold property management field. He is a Chartered Surveyor with appropriate insurance. He assured the parties that he would manage by consultation and that his fees could reduce if harmony reigned.

24. The Tribunal makes an Order under Section 24 of the 1985 Act appointing Mr Philip Muzzlewhite as Manager of the property. The terms of the Tribunal's Order are detailed below this Determination and form a part of it. The Tribunal has concluded that without the appointment, as the parties agreed at the hearing, there is no resolution in sight to the ruptured relationship currently evident. The appointment will be at some cost to the lessees, but, given the assurance that the Manager will act in accordance with the RICS Code of Practice and apply the terms of the leases in a wholly impartial manner, seeking accord where possible, and given that the parties can make further application to the Tribunal at a later stage, the appointment of a Manager appears to the Tribunal to be the only way forward for these currently warring parties. The Manager will provide a focus and forum for the healing of wounds; should that not be possible, the Manager will in any event provide to all parties an impartial and professional service.

A Cresswell (Judge)

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Case Reference: CHI/18UC/LDC/2013/0041
CHI/18UC/LBC/2013/0030
CHI/18UC/LAM/2013/0010
CHI/18UC/LSC/2013/0018

LEASEHOLD VALUATION TRIBUNAL

In the matter of Section 24 of the Landlord and Tenant Act 1987

PROPERTY: 66 Pennsylvania Road, Exeter EX4 6DF

BETWEEN

Lessee Applicants: Ms S Sokolowski and Mr R Compton

and

Lessor Respondent: Willowsford Property Management Company Limited

ORDER FOR THE APPOINTMENT OF MR PHILIP MUZZLEWHITE AS MANAGER

UPON hearing the evidence

IT IS ORDERED THAT

1. Mr Philip Muzzlewhite FRICS of Whitton and Laing, Chartered Surveyors of 20 Queen Street, Exeter, EX4 3SN ("The Manager") be appointed for an indefinite period from the date of this Order as the Manager of the Property pursuant to Section 24 of the Landlord and Tenant Act 1987, as amended by the Commonhold and Leasehold Reform Act 2002 ("the Act") with liberty for either the Manager or a majority of Lessees to apply to the Tribunal for it to be brought to an end.

2. The Manager shall manage the Property in accordance with:

   a) The respective obligations of the Lessor and the Lessees under the Leases by which each of the flats of the Property are demised as supplemented by the Deeds of Easement and Covenant and in particular, without prejudice to the

generality of the foregoing, with regard to the repair, decoration, provision of services to and insurance of the Property and

b) The duties of a Manager as defined by and set out in the Second Edition Service Charge Residential Management Code ("the code") published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

3. The following powers are, without limitation to the generality of this Order, expressly conferred on the Manager.

a) the power to appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his powers and duties

b) the power in his own name on behalf of the Landlord to bring, defend, or continue any action or other legal proceedings in connection with the Leases or the Property, but subject to applying for directions as provided for under paragraph 8 of this Order.

c) the power to receive, consider, refuse or grant or otherwise deal with application for consents or licences and like matters as the Lessees may require under the terms of their Leases.

d) the power to enforce the Landlord's and Lessee's covenants under the Leases.

4. The Lessees and their servants and agents shall give reasonable assistance and co-operation to the Manager in pursuance of his duties and powers under this Order and shall not interfere with the exercise of any of his said duties and powers.

5. Without prejudice to the generality of paragraph 4.

The Lessor shall deliver to the Manager all such books, papers, memoranda, records, bank statements, computer records, contracts, correspondence and all other documents as are necessary or desirable for the management of the Property and as are in its control within 14 days of the date of the Order to Mr Philip Muzzlewhite FRICS of Whitton and Laing, Chartered Surveyors of 20 Queen Street, Exeter, EX4 3SN.

6. The Manager shall receive all sums payable by way of service charges or otherwise arising under the said Leases.

7. The Manager shall apply the payments of ground rent and other monies receivable by him first in the discharge of such sums as the Lessor properly requires in order to meet the expenditure involved in filing its annual return and preparing any documents necessary in connection therewith and shall apply the remaining amounts of ground rent and monies received by him (other than those representing

his costs and expenses hereby specified in paragraph 13) towards the costs of the performance of the covenants of the landlord's covenants contained in the said leases for which he is responsible within the terms of this Order.

8. In the event that it is necessary for the Manager to commence legal proceedings for the recovery of sums due under this Order, or in the event that any proceedings are brought against the Manager, the Manager shall be at liberty to apply to the Tribunal for appropriate directions.

9. For the avoidance of doubt it is stated that the Manager shall have no obligation under this Order to enter into any financial obligation unless he has been fully put in funds to discharge the obligation.

10. All the Lessees are ordered to provide the Manager and such contractors, consultants and agents as he may retain, with such access to their respective flats and the Property as may be reasonably be required for the purposes of carrying out any inspection repairs or decoration.

11. The Manager shall maintain appropriate indemnity insurance compliant with RICS requirements and shall file with the Tribunal evidence of such insurance within 14 days of the date of this Order.

12. The Manager shall make arrangements for the insurance of the building forthwith upon appointment in accordance with the terms of the Sixth Schedules of the Leases.

13. The Manager shall be entitled to the following remuneration (which for the avoidance of doubt shall be recoverable as part of the said service charges) namely those sums set out in the letter of Whitton and Laing of 27 August 2013 to the Tribunal. The Manager is to provide the Lessees with a copy of that letter and the documents attached to that letter within 14 days of this Order so that the Lessees are aware of the levels of remuneration to be charged to the service charge.

14. The Manager shall seek professional advice where appropriate as is permitted under the terms of the lease.

15. During the period of appointment the Manager shall comply with all statutory requirements, including those included in the Landlord and Tenant Act 1985 and the Landlord and Tenant Act 1987, as amended, and the Code and in particular:

    a) Without prejudice to the generality, completing fire risk and asbestos assessments in accordance with relevant legislation (cf Para 13.15 of the Code)

    b) Reviewing the insurance of the property, obtaining quotations and arranging insurance as necessary.

c) Prepare and annual service charge budget, including if required a sinking fund provision.

d) Recover the agreed service charge from the Lessees.

e) Prepare a maintenance plan of the repair and decoration of the exterior and common parts of the property.

f) Deal expeditiously with routine repairs.

g) Liaise with vendors and purchasers, and their solicitors if applicable, in connection with the sale of the individual flats.

h) Maintain current and deposit accounts for any reserve/sinking fund and account to the Lessees periodically for monies raised and expended.

16. This Order shall remain in force for an indefinite period from 7 January 2014 with liberty for either the Manager or a majority of Lessees to apply to the Tribunal for it to be brought to an end.

17. The parties and the Manager are at liberty to apply to the Tribunal for such variation of or addition to the powers contained in the Order as they may reasonably require.

18. This Order shall be protected by the entry by the Manager of a restriction in the register at HM Land Registry in accordance with Section 24(8) of the Act.

19. The Manager shall produce a written progress report for the Tribunal with copies to be sent to the Lessees no later than 14 January 2015. The Manager and the lessees shall be entitled to apply to the Tribunal for further directions if circumstances necessitate such an application.

A Cresswell (Judge) Date: 24 December 2013