



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

**Case Reference** : CHI/00HY/LAM/2014/0016

**Property** : 20 Bedwin Street, Salisbury, SP1 3UT

**Applicants** : 1. Imagine Property Rentals Limited (Flat 6)  
2. Ms Patricia Osborne (Flat 2)

**Representatives** : Mr. Rupert Cohen, Counsel for Imagine  
Property Rentals Limited  
Mr. Parsons for Patricia Osborne.

**Respondents** : 1. 20/20A Bedwin Street (Salisbury)  
Management Limited  
2. Anne Pritchard (Flat 1)  
3. Helen Wendy Bray (Flat 3)  
4. William and Judith Dickinson (Flat 4)  
5. Matthew and Charlotte Andrews (Flat 5)

**Representative** : Amanda Gourlay, Counsel for 20/20A Bedwin  
Street (Salisbury) Management Limited.

**Type of Application** : Appointment of Manager

**Tribunal  
Member(s)** : Judge J G Orme  
Mr. S Hodges FRICS

**Date and venue of  
CMH** : 30 November 2015  
Salisbury Law Courts, Wilton Road, Salisbury

**Date of Decision** : 7 December 2015

## Decision

1. **For the reasons set out below, the Tribunal refuses the application by the Applicants for an adjournment of the hearing of the application to a further date.**
2. **For the reasons set out below, the Tribunal declines to make an order pursuant to section 24(1) of the Landlord and Tenant Act 1987 appointing a manager of premises at 20 Bedwin Street, Salisbury.**
3. **The Tribunal makes no order pursuant to section 20C of the Landlord and Tenant Act 1985 (as amended).**

## Reasons

### Background

1. In about 2003 a block of 6 flats and maisonettes was built at 20 Bedwin Street, Salisbury ("the Property"). The flats have been sold on long leaseholds. The freehold of the Property is now vested in 20/20A Bedwin Street (Salisbury) Management Limited ("the Company"). The Company is a residents' management company and the members of the Company are intended to be the leaseholders of the 6 flats. The Company is responsible for the management and maintenance of the Property and is entitled to collect a service charge from the leaseholders to cover costs so incurred.
2. Since 1 June 2013, the Company has not employed a managing agent but has managed the Property by itself. Mr. William Dickinson, who is one of the joint leaseholders of Flat 4, has been employed as managing director of the Company and has been the person in effective control of the management of the Property.
3. In 2012, a structural survey of the Property disclosed that urgent and costly works were required to the roof of the Property. Those works were carried out in 2013. The cost of those works was included in the service charge account for the year 2013 and resulted in the service charge demanded of leaseholders being very much higher than in previous years.
4. The lease of Flat 6 was originally granted to Mr. Richard Alan Molton on 12 December 2003. At some time the lease was transferred to his son, Mr. Lloyd Molton. On 28 March 2014, Lloyd Molton transferred Flat 6 to Imagine Property Rentals Limited ("Imagine"). Mr. Richard Molton is an employee of Imagine.
5. For some considerable time, the Company has alleged that Mr. Richard Molton, Mr. Lloyd Molton and/or Imagine have not been paying service charges properly due in respect of Flat 6. That has caused a bad

relationship to arise between the Company and Mr. Dickinson on the one hand and Mr. Richard Molton, Mr. Lloyd Molton and Imagine on the other hand. That relationship was worsened as a result of disputes between the parties as to how the repairs to the roof should be carried out and at what cost. The consequence has been a number of applications to this Tribunal to resolve various aspects of the dispute. In most of these disputes, the Company has been supported by the leaseholders of Flats 1, 3, 4 and 5 and Imagine has been supported by the leaseholder of Flat 2.

6. On 7 November 2014, Imagine applied to the Tribunal to appoint a manager of the Property pursuant to section 24 of the Landlord and Tenant Act 1987 (“the 1987 Act”).
7. Amongst other applications already dealt with by the Tribunal relating to the Property are:
  - a. Case No. CHI/00HY/LSC/2013/0003 in which the Company applied for a determination of the reasonableness of the 2012 service charge and a maintenance improvement programme for subsequent years. A differently constituted tribunal delivered its decision on 23 May 2013.
  - b. Case No. CHI/00HY/LVL/2013/0001 in which the Company applied for variation of the terms of the leases of the flats. A differently constituted tribunal delivered its decision on 25 October 2013.
  - c. Case No. CHI/00HY/LIS/2014/0014 in which the Company applied for a determination of the reasonableness of the 2013 service charge. That application, together with 2 other applications made by the Company, was settled at mediation on 8 January 2015.
  - d. Case No. CHI/00HY/LAC/2015/0002 in which the Company applied for a determination that Imagine was liable to pay an administration charge of £23,000.40 being costs and expenses incurred by the Company in connection with the applications which were settled on 8 January 2015. The Tribunal, which consisted of the same members as on this application, delivered its decision on 27 July 2015.
  - e. Case No. CHI/00HY/LSC/2015/0011 in which the Company applied for a determination that, in the alternative, those costs were recoverable as part of the service charge. The same Tribunal delivered its 2 decisions on that application on 27 July and 21 October 2015.
  - f. Case No. CHI/00HY/LSC/2015/0014 in which the Company applied for a determination of the reasonableness of the 2014 service charge. The same Tribunal delivered its decision on that application on 21 October 2015.
8. In relation to this application, the Tribunal held a telephone case management hearing on 27 January 2015 and directions were made on that occasion. Ms Osborne was joined as an Applicant to the application. Directions were given for the Applicants to prepare their statement of case and for the Company to prepare a statement in reply. Those

directions were subsequently varied by further directions made on 9 March, 8 April and 17 April 2015.

9. A further case management hearing was held on 1 July 2015 by which time the application was ready for hearing subject to the Company being permitted to file a further short narrative statement to update its position. However, it was agreed that the application should be heard after the hearing of the 3 extant applications, 2015/0002, 2015/0011 and 2015/0014.
10. The application came on for hearing on 7 October 2015. By that time the Company had instructed Mr. Greaney of Initiative Property Management Limited to manage the Property with effect from 1 January 2016. The Applicants were prepared to agree to the appointment of Mr. Greaney provided that he was appointed by the Tribunal and not by the Company. Mr Greaney was not prepared to accept an appointment by the Tribunal.
11. The Applicants had originally proposed Mr. Shield of Salisbury Block Management to act as manager. Believing that terms had been agreed with the Company, the Applicants stood down Mr. Shield and he did not attend the hearing. Therefore, the Tribunal could not proceed with hearing the application on 7 October.
12. The Tribunal adjourned the hearing in the hope that the parties would be able to agree on the identity of a manager to be appointed by the Tribunal. Further directions were issued by the Tribunal on 7 October 2015. At paragraph 15 of the directions it was stated "*in the event that the parties are not able to agree on the terms of a draft order, the Applicants must be prepared to proceed with their application at the next hearing.*"
13. The parties have not been able to reach terms of agreement and the application was listed for hearing on 30 November 2015.
14. In the application, Imagine applied for an order to be made by the Tribunal pursuant to section 20C of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act").

### **The Law**

15. The relevant statutory provisions are set out at sections 21 to 24 of the 1987 Act. The text of the relevant part of those provisions is set out in the appendix to this decision.
16. Where a property consists of two or more flats, the leaseholder(s) of one or more of the flats may, if he is dissatisfied with the way in which the landlord is managing the property, apply to the Tribunal for a manager to be appointed by the Tribunal to carry out the management functions in relation to the property in place of the landlord. Before making an application, the leaseholder must serve on the landlord and any other person who is carrying out the management of the property on behalf of the landlord, a notice complying with section 22 of the 1987 Act.

17. A Tribunal may only make an order under section 24 of the 1987 Act if it is satisfied that one of the circumstances set out in subsection 24(2) is made out. The most relevant grounds to this application are that unreasonable service charges have been made or that unreasonable administration charges have been made. Subsection 24(2)(b) allows the Tribunal to make an order if other grounds exist. However, in each case, the Tribunal must also be satisfied that it is just and convenient to make an order in all the circumstances of the case.
18. The 1987 Act does not specify what qualifications or experience should be held by a manager who is to be appointed by the Tribunal. However, the Tribunal's power to make an order is a discretionary one and it is generally accepted that a Tribunal should not exercise its discretion to make an order unless it is satisfied that the qualifications and experience of the person to be appointed are such as to make him suitable to be appointed as a manager.
19. To that end, the directions issued by the Tribunal on 27 January 2015 included a direction that the Applicants' case should include a statement setting out the residential management experience of the proposed manager together with the management plan, proposed remuneration and details of any professional indemnity insurance, confirmation that the manager will accept the appointment and confirmation that the manager will comply with the current edition of the Code of Practice published by the Royal Institution of Chartered Surveyors. The directions also provided for the proposed manager to attend the hearing so that the Tribunal would be able to ask him questions so as to be satisfied that he was a person suitable to be appointed by the Tribunal.

### **The Hearing**

20. The hearing took place at the Salisbury Law Courts, Wilton Road, Salisbury on 30 November 2015. Imagine was represented by Mr. Rupert Cohen of Counsel. Ms. Osborne was represented by Mr. Parsons. The Company was represented by Miss Gourlay of Counsel. The other Respondents did not appear and were not represented.
21. At the outset of the hearing, Miss Gourlay confirmed that the Company did not take issue with the validity of the section 22 notice which had been served by Imagine or that a valid application had been made. She accepted that following the Tribunal's decision in case No. CHI/00HY/LSC/2015/0014, it would be open to the Tribunal to be satisfied that circumstances as set out in section 24(2)(ab)(i) had been established. It therefore remained for the Tribunal to determine whether it was just and convenient to make an order in all the circumstances and whether the proposed manager was suitable.
22. Since the hearing on 7 October, Mr. Shield had indicated that he was no longer prepared to accept an appointment by the Tribunal. Imagine now proposed that Mr. Douglas Smith t/a John Jeffery of Salisbury should be appointed as manager. Imagine had filed a letter from Mr. Smith setting

out his experience and his willingness to be appointed together with a management plan. It was agreed that the Tribunal would first consider whether Mr. Smith was a suitable person to be appointed as a manager before the Tribunal went on to consider arguments as to whether it was just and convenient to appoint a manager.

23. The Tribunal had before it a large bundle of documents running to over 700 pages which, in the events which happened, were not referred to. As they constitute the documentary evidence before the Tribunal, the contents will be recorded here.
24. Imagine had filed a statement of case relying on grounds 24(2)(a), 24(2)(ab) and 24(2)(aba). It was supported by witness statements from Rachel Lindsay, Richard Molton and Lloyd Molton. Ms. Osborne had filed a witness statement in support of the application.
25. The Company had filed a statement of case opposing the application which was supported by witness statements from William Dickinson, Anne Pritchard, Helen Bray and Matthew Andrews.
26. Imagine and Ms. Osborne had filed statements in reply. William Dickinson had filed an updating witness statement.
27. Following the hearing on 7 October, further documents had been submitted to the Tribunal on the basis that permission to rely on them would be sought at the hearing. Ms. Osborne had filed a bundle of further documents. Imagine filed details of Mr. Smith. The Company filed a further bundle of documents. The Tribunal considered the documents relating to Mr. Smith but the others were not considered and no permission was given for them to be relied upon.

#### **The Evidence relating to Mr. Smith**

28. Imagine relied upon a letter from Mr. Smith dated 18 November 2015 in which he set out his experience of residential property management and the terms on which he would be prepared to accept an appointment.
29. In response to questions from the Tribunal, Mr. Smith said that he had been involved in residential property management for about 10 years and that he currently managed 2 blocks of flats. His main business was selling and letting residential and commercial property. He had resigned as a fellow of the RICS about 15 years ago as his business did not require such a qualification and he could not justify the fee. He was not registered with ARMA but was a member of the Property Ombudsman scheme. He produced a copy of his insurance policy covering professional risks which included residential property management. He had not inspected the Property specifically in relation to this appointment but he was familiar with the Property from previous involvement. His office was less than 5 minutes walk from the Property so he did not intend to visit on a regular basis but as and when required.

30. In response to questions from Miss Gourlay, Mr. Smith said that his previous involvement with the Property was through acting for the vendor on the original sale of the flats and subsequently in letting Flat 6. He confirmed that he did not advertise his business as being involved in property management nor did he advertise his membership of the Property Ombudsman scheme. In addition to the 2 blocks already mentioned, he had also managed a block in London for about 25 years. He had not previously been appointed as a manager by the Tribunal but understood the difference between such an appointment and appointment by the landlord. He did not know whether his insurance policy covered such an appointment. He had looked at a copy of the lease of Flat 6 but had not considered it in detail. He was not aware that the lease had been varied. He had read a copy of the building surveyor's report obtained by the Company and would want to discuss it with the surveyor if appointed.
31. Mr. Smith was asked at length as to what action he would take if one of the leaseholders refused to pay a service charge. He indicated that he would instruct solicitors to recover the shortfall and he was aware that he could ask the Tribunal for directions. He did not appear to be aware that he might be personally liable for any shortfall.
32. Mr. Smith advised the Tribunal that he was aware of the Service Charge Residential Management Code and was prepared to abide by its terms. He had only come across it about 1 year ago and thought that it did not have statutory force but was just for guidance. He was not able to specify which statutes specifically apply to residential management and was not aware of section 42 of the 1987 Act. He had not heard of the Service Charge (Consultation etc) (England) Regulations 2003 and was not aware of the limit over which it was necessary to consult nor was he aware of the prescribed consultation process.
33. Mr. Smith said that he relied on reading the Estates Gazette for keeping up to date with developments as well as emails from ARMA and other organisations some of which were wishing to sell him services. He did not appear to have any system of formal continuing training.

**Submissions on suitability of proposed manager.**

34. Mr. Cohen said that Imagine was asking the Tribunal to appoint Mr. Smith for a period of 1 year to provide the leaseholders with a short period in which to resolve other differences and to settle down and get management of the Property back to normal. Mr. Smith was local and provided a practical and cost effective solution to the present impasse.
35. Mr. Parsons adopted Mr. Cohen's submissions and had nothing to add.
36. Miss Gourlay submitted that Mr. Smith was not suitable to be appointed by the Tribunal. He was not a specialist in residential property management and had shown a lack of knowledge of the consultation procedure, the Code of Practice and how to go about recovering arrears

of service charge. He was not someone in whom the leaseholders would have confidence in managing the Property.

### **Conclusions on suitability of proposed manager**

37. The Tribunal was satisfied that Mr. Smith had experience in the property world. That experience in recent years has been in sales and letting of residential and commercial property. He had approached the request to act in this matter in a very helpful and well meaning manner in an honest attempt to assist both the parties and the Tribunal. The Tribunal appreciated that approach.
38. However, given the history of the Property and the disputes between the leaseholders, it is incumbent upon the Tribunal that, if it appoints a manager, it should appoint someone who has the relevant expertise and has the ability to gain the trust, confidence and respect of the leaseholders.
39. In answer to questions from Miss Gourlay, it was apparent that and the Tribunal finds that:
  - a. Mr. Smith has no current professional qualifications pertinent to residential property management. He resigned as a fellow of the RICS 15 years ago. He is not a member of IRPM and he is not registered with ARMA.
  - b. Mr. Smith showed a lack of knowledge of statutes and regulations relating to residential property management. He was not aware of section 42 of the 1987 Act, the service charge consultation regulations or the procedure set out in those regulations.
  - c. Mr. Smith did not satisfy the Tribunal as to his ability to keep up to date with developments in residential property management. He undertakes no formal continuing professional development and relies on reading the Estates Gazette and receiving unsolicited emails from potential suppliers.
  - d. Mr. Smith has no experience of acting as a Tribunal appointed manager and although everyone has to start with a first appointment, he did not demonstrate that he had made appropriate enquiries as to what would be involved and his potential liability under such an appointment. Further he had not studied the leases to consider what might be involved and the difficulties that he might encounter. He was not aware that the leases had been varied by the Tribunal.
40. Based on those findings, on the assumption that the Tribunal would otherwise be satisfied that it was entitled to and was prepared to exercise its discretion under section 24 of the 1987 Act to appoint a manager, the Tribunal would not be prepared to appoint Mr. Smith as manager. The Tribunal does not consider that Mr. Smith had the appropriate expertise or was otherwise suitable to be appointed.
41. The Tribunal does not accept Mr. Cohen's submission that the appointment of Mr. Smith would be a sensible practical solution to the present situation at the Property. Even if it is appropriate to appoint a



manager, it would not be appropriate to appoint Mr. Smith given the evidence before the Tribunal.

### **Application for Adjournment**

42. In the light of that decision, Mr. Cohen then applied for the hearing to be adjourned to allow the Applicants to propose someone else as manager. In the light of the Tribunal's determination in relation to the 2014 service charge, the Applicants had satisfied the initial test for appointment set out in section 24(2)(ab)(i). The history of the Property and the 6 applications to the Tribunal would justify the Tribunal finding it just and convenient to appoint. The hearing on 7 October had been adjourned as Mr. Richard Molton thought that he had reached agreement with Mr. Dickinson and so Mr. Shield had been stood down. Mr. Shield had subsequently declined to act when faced with substantial documents from Mr. Dickinson. Mr. Cohen was sure that another manager could be found if offered the right financial terms. Mr. Smith had stepped in at short notice in order to enable the Applicants to comply with previous directions. Mr. Cohen suggested that the adjournment be allowed on terms that if the Applicants did not find a manager by a certain date, the application be dismissed. He considered the fact that the Company had appointed other managing agents to be irrelevant as this dispute involved a personality conflict.
43. Mr. Parsons adopted Mr. Cohen's submissions and had nothing to add.
44. Miss Gourlay opposed an adjournment. The application had been made over 1 year ago and the Applicants should have their house in order. What was required to nominate a manager should have been apparent to the Applicants. The adjournment on the last occasion was propitious as Mr. Shield had now decided that he did not want an appointment. 2 managers had now been proposed and neither was suitable. Further costs were being incurred. The Company had appointed a new managing agent with effect from 1 January 2016. Although Imagine had got through the initial gateway, the just and convenient test had to be applied at the time of the decision to appoint and circumstances may change between now and any adjourned hearing date.
45. The Tribunal drew the parties' attention to the fact that it had before it an email from Mr. B Wales in which he had declined an appointment and indicated that if he had been prepared to accept an appointment, his fees would be between £10,000 and £12,000 per year.

### **Conclusions on adjournment**

46. The situation faced by the Tribunal is that:
  - a. The Applicants have made an application for appointment.
  - b. There appears to be no legal reason why the Tribunal may not exercise its discretion to make an order.
  - c. The Respondents appear to accept that the Tribunal would be able to make an order under section 24(2)(ab)(i).
  - d. The Tribunal would still need to be satisfied that it is just and convenient to make such an order.

- e. Mr. Shield was the original proposed manager. He has now withdrawn.
  - f. Mr. Wales was approached but declined to consider an appointment. He indicated potential fees in the region of £10,000 to £12,000.
  - g. Mr. Smith was put forward today as a potential manager but was found to be not suitable.
  - h. The application was made on 7 November 2014 and was listed to be heard on 7 October 2015. It was adjourned as Mr. Shield was not present. The Tribunal's directions on that day made it clear that the Applicants must be prepared to proceed today if there was no negotiated settlement.
  - i. The Applicants now seek another adjournment in order to find another potential manager.
  - j. In the meantime, the Company has appointed managing agents to manage with effect from 1 January.
47. In considering the application, the Tribunal must bear in mind the overriding objective as set out in the *Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013/1169*. The overriding objective is to deal with cases fairly and justly. That means taking into account the interests of all parties. Dealing with a case fairly and justly includes dealing with it in a manner which is proportionate. This application has already engaged the Tribunal in 2 days of hearings including today. It also includes avoiding delay. The Applicants were on notice that they should be ready to proceed today.
48. If the Tribunal allows the adjournment, the Company will be in suspense for a further period of time and will not know whether it is able to go ahead with the appointment of the managing agent which has already been agreed by 4 of the 6 leaseholders.
49. If the Tribunal allows the adjournment, there is no certainty that the Applicants' will be able to find a suitable nominee nor is there any indication of the likely cost of such an appointment. Given the indication by Mr. Wales it may be that an appointment could only be made at a cost which is not proportionate to the nature of the Property.
50. If the Tribunal refuses an adjournment then it is likely that the application will be dismissed. The Company can then go ahead with the appointment of the managing agent. The Applicants may make a further application in the future in the event that there are further problems with management of the Property.
51. Had the Tribunal been satisfied that Mr. Smith was suitable to be appointed, then it is likely, subject to having heard further submissions on the question of just and convenient, that the Tribunal would have been minded to make an appointment. However, as the Tribunal was not so satisfied, the Tribunal is not making any decision today as to whether it would have found it just and convenient to appoint a manager.

52. Taking all those factors into account, the Tribunal was not satisfied that it would be fair or just to allow an adjournment and the application was refused.

### **Dismissal of claim and Section 20C**

53. The Tribunal having refused the application for an adjournment, Mr. Cohen accepted that the Tribunal had no alternative other than to dismiss the application. He did not pursue the application for an order under section 20C of the 1985 Act.

### **Right of Appeal**

54. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 176B of the Commonhold and Leasehold Reform Act 2002 or section 11 of the Tribunals, Courts and Enforcement Act 2007.
55. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. 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. 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. 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.
56. The parties are directed to Regulation 52 of the *Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169*. Any application to the Upper Tribunal must be made in accordance with the *Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600*.

J G Orme  
Judge of the First-tier Tribunal  
Dated 7 December 2015.

## Appendix

### Appendix of relevant legislation

#### Landlord and Tenant Act 1987

##### Section 21

- (1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to the appropriate tribunal for an order under section 24 appointing a manager to act in relation to those premises.
- (2) Subject to subsection (3), this Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.
- (3) This Part does not apply to any such premises at a time when –
  - (a) the interest of the landlord in the premises is held by –
    - (i) an exempt landlord or a resident landlord, or
    - (ii) the Welsh Ministers in their new towns residuary capacity or
  - (b) the premises are included within the functional land of any charity.
- (3A) But this Part is not prevented from applying to any premises because the interest of the landlord in the premises is held by a resident landlord if at least one-half of the flats contained in the premises are held on long leases which are not tenancies to which Part 2 of the Landlord and Tenant Act 1954 (c56) applies.
- (4) ...
- (5) ...
- (6) ...
- (7) ...
- (8) ...

##### Section 22

- (1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on –
  - (i) the landlord, and
  - (ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.
- (2) A notice under this section must –
  - (a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which any person on whom the notice is served may serve notices, including notices in proceedings, on him in connection with this Part;
  - (b) state that the tenant intends to make an application for an order under section 24 to be made by the appropriate tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with;

- (c) specify the grounds on which the tribunal would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;
  - (d) where those matters are capable of being remedied by any person on whom the notice is served, require him, within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and
  - (e) contain such information (if any) as the Secretary of State may by regulations prescribe.
- (3) .....
- (4) .....

### **Section 23**

- (1) No application for an order under section 24 shall be made to the appropriate tribunal unless
- (a) in a case where a notice has been served under section 22, either -
    - (i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the person required to take steps in pursuance of that paragraph having taken them, or
    - (ii) that paragraph was not applicable in the circumstances of the case; or
  - (b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either -
    - (i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or
    - (ii) no direction was given by the tribunal when making the order.

### **Section 24**

- (1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies -
- (a) such functions in connection with the management of the premises, or
  - (b) such functions of a receiver, or both, as the tribunal thinks fit.
- (2) The appropriate tribunal may only make an order under this section in the following circumstances, namely
- (a) where the tribunal is satisfied -
    - (i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
    - (ii) ....
    - (iii) that it is just and convenient to make the order in all the circumstances of the case;

- (ab) where the tribunal is satisfied
    - (i) that unreasonable service charges have been made, or are proposed or likely to be made, and
    - (ii) that it is just and convenient to make the order in all the circumstances of the case;
  - (aba) where the tribunal is satisfied –
    - (i) that unreasonable variable administration charges have been made, or are proposed or likely to be made; and
    - (ii) that it is just and convenient to make the order in all the circumstances of the case;
  - (abb) where the tribunal is satisfied –
    - (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and
    - (ii) that it is just and convenient to make the order in all the circumstances of the case;
  - (ac) where the tribunal is satisfied –
    - (i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and
    - (ii) that it is just and convenient to make the order in all the circumstances of the case; or
  - (b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.
- (2ZA) In this section "relevant person" means a person –
- (a) on whom a notice has been served under section 22, or
  - (b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.
- (2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable -
- (a) if the amount is unreasonable having regard to the items for which it is payable.
  - (b) if the items for which it is payable are of an unnecessarily high standard, or
  - (c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.
- In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by the section 27 of that Act (rent of dwelling registered and not entered as variable).
- (2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
- (3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.
  - (4) An order under this section may make provision with respect to –

- (a) such matters relating to the exercise by the manager of his functions under the order, and
  - (b) such incidental or ancillary matters, as the tribunal thinks fit; and on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.
- (5) Without prejudice to the generality of subsection (4), an order under this section may provide –
- (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
  - (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
  - (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any such persons;
  - (d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.
- (6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.
- (7) ....
- (8) ....
- (9) ....
- (10) ....
- (11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.

**Landlord and Tenant Act 1985 (as amended)**

**Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the First-tier Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) .....
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.