



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

<b>Case Reference</b>	:	<b>LON/00AG/LVM/2016/0005</b>
<b>Property</b>	:	<b>64 Fitzjohns Avenue, London NW3 5LT</b>
<b>Applicant</b>	:	<b>Mr Martin Kingsley (K&amp;M Group Ltd)</b>
<b>Representative</b>	:	<b>In person</b>
<b>Respondents</b>	:	<b>1. Dr Simon Gabbay (Landlord) 2. Slaprine Ltd (flat A) 3. Ms Emma Casdagli (flat B) 4. Mr and Mrs M A Mirzai (flat C) 5. Ms Susan Oldroyd (flat D) 6. Prof DV &amp; Mrs V Green (flat E)</b>
<b>Representative</b>	:	<b>In person</b>
<b>Type of Application</b>	:	<b>Application for variation of a management order</b>
<b>Tribunal Members</b>	:	<b>Tribunal Judge Rahman Mr S F Mason BSc FRICS FCI Arb</b>
<b>Date and venue of determination</b>	:	<b>30/6/16 at 10 Alfred Place, London WC1E 7LR</b>
<b>Date of Decision</b>	:	<b>18/7/16</b>

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Management Order dated 1/9/14, made by this tribunal on 19/8/14, be varied to the extent that;
- (2) With respect to the proposed works only, each flat pay an advance service charge. The amount payable by flat A is £25,000. The amount payable by flats B-E is £30,000 each. Any flat that has previously paid into the reserve fund for the proposed works or is owed any surplus service charge would have that amount deducted / offset from the contribution due. The relevant sums due from each flat is to be paid to the applicant within 28 days from the hearing date and is to be kept by the applicant in his clients' account.
- (3) With respect to the applicants future fees only; the applicant be entitled to a basic management fee of £750 per flat. The applicant be entitled to an additional charge of £150 per hour pro rata for pursuing arrears and to be paid only by those being pursued for arrears. The applicant be entitled to a fee representing 4% of the cost of the tender for the proposed major works.

## **The application**

1. The applicant, previously appointed as manager by the tribunal for the period 1/9/14 to 31/8/17, seeks a variation of the order made by the tribunal on 19/8/14. The tribunal identified, in a letter sent to the parties on 17/6/16, that the issues to be determined by the tribunal were as follows;
  - (i) Problems of access, particularly with flat E,
  - (ii) The need for the applicant to collect advance service charges sufficient to fund the proposed works and the appropriate level of such a charge,
  - (iii) The appropriate level of the applicants future fees.
2. The applicant and Professor Green and Mrs Green agreed that the separate application made by Professor Green and Mrs Green dated 26/5/16, disputing the service charges for the years 2009-2016 and the calculation and collection of service charge arrears, were to be dealt with separately at a future date as suggested by the tribunal in its letter dated 17/6/16.

## **The hearing**

3. The applicant appeared in person. The first respondent did not attend or provide any explanation for his non attendance. The second respondent was represented by Mr Robert McGregor. The third respondent appeared in person. The fourth respondents did not attend, presumably as they reside in France. The fifth respondent attended with her husband Professor Anthony Harrild. The sixth respondents attended in person.
4. At the start of the hearing all the parties present confirmed that the issues to be determined at the hearing were those identified by the tribunal in the letter dated 17/6/16. After general discussions with the parties concerning the issues, the parties agreed to discuss matters further. The tribunal allowed the parties approximately 50 minutes for further discussions.
5. Having discussed matters, the parties confirmed the following:
  - (i) All parties present agreed that the lease adequately dealt with access issues concerning the flats therefore there was no need for the tribunal to determine this issue.
  - (ii) All parties present agreed, with respect to the proposed works only, that there was a need for advance service charges for the proposed works, each flat had already paid £1,000.00 each towards the cost of the surveyors fee, the additional amount payable by flat A was £25,000 and the additional amount payable by flats B-E was £30,000 each, any flat that had previously paid into the reserve fund for the proposed works or was owed any surplus service charge would have that amount deducted / offset from the contribution due, the parties agreed based upon "provisional" figures that the amount to be deducted / offset were as follows: flat A £7,100.00, flat B £20,269.68, flat C £13,495.72, flat D £9,600.00, and flat E had no sums to be deducted or offset as nothing had been paid so far, and the relevant sums due from each flat were to be paid to the applicant within 28 days from the hearing date and were to be kept by the applicant in his clients' account.
  - (iii) The parties were unable to agree the appropriate level of the applicant's future fees.
6. Having heard evidence and submissions from the parties, the tribunal has determined the applicant's level of fees as follows.

## **Applicants proposed fees**

### **Basic fee per flat**

7. The applicant stated that his current fee was £350 per flat. He wanted to increase his fee to £750 per flat for the same level of service. He stated that his current fee was very low and uneconomical. His fee had remained at £350 since 2009. When he set the fee in 2009 he was not aware of the specific issues concerning this building. He should have increased his fee in 2014 but was more concerned at the time for the welfare of the building than himself. Due to the specific issues concerning this building, his involvement in this building was significantly higher than for other similar sized buildings. His proposed fee increase was based upon what he thought was a reasonable market rate. He stated that other firms would not be willing to take on the management of such a building.
8. Professor Green stated that he had made enquiries and that the adjacent property was paying £500 per flat based upon the rateable value. The property had 10 flats, a garden, and parking areas. The subject property did not have a garden or parking areas. He stated that he did not have any specific quotes for the subject property.
9. Professor Harrild stated that he had made enquiries before the applicant was appointed manager and he was told by various managing agents that they were not interested in managing the property as it was too small.
10. The tribunal notes the evidence from Professor Harrild, confirming the applicants evidence, that other managing agents would not like to manage the subject property as it is too small. The tribunal notes the evidence from the applicant that £750 per flat is a competitive rate, based upon his knowledge of this particular market, and the absence of any alternative quotes from the respondents. The tribunal did not find the example provided by Professor Green, concerning the fee paid per flat at the adjacent property, to be a fair comparison as that property concerned 10 flats and a gross fee that was much higher than for the subject property and there is no evidence concerning how easy or difficult it is to manage that property. Bearing in mind that the applicants current fee has remained the same for seven years, the particular difficulties in managing this property and the consequent appointment of a manager and the subsequent application for a variation of that order, the tribunal determines that a fee of £750 per flat is reasonable.

#### Fee per hour for pursuing arrears

11. The applicant stated that much of his time was being spent in chasing arrears and that those in arrears should be charged £200 per hour (excluding vat at present as he is not vat registered at present) for the time wasted in chasing such arrears. He has been appointed manager by the tribunal in five other cases and the tribunal had agreed to a similar fee in those cases. However, he would agree in this case to £150 per hour.
12. The respondents stated that they had nothing to say and would leave the matter to be determined by the tribunal.
13. The tribunal agrees with the reasons put forward by the applicant and determines that a charge of £150 per hour pro rata, to be paid only by those being chased for arrears, is reasonable.

#### Fee for processing insurance claims

14. The applicant confirmed he was not paid any commission and stated that he would be happy to exclude this charge if his basic fee were increased to £750 per flat.
15. The respondents stated that the basic fee, whatever it was, should cover this additional charge.
16. Given the increase of the basic fee to £750 per flat, the tribunal determines and the applicant agrees that this additional fee would not be reasonable.

#### A fee representing a percentage of the cost of the tender

17. The applicant stated that the surveyor proposed a fee of 12.5% for the post contract administration of the major works. The applicant thought that the figure seemed a bit high for what work is left to be done and that he would look to negotiate a lower figure with the surveyor. The applicant wanted an additional 7% on top of the 12.5% being paid to the surveyor. The applicant stated that this was to reflect the fact that he would have a significant role based upon the ongoing and historical problems with the building and the lessees. He would need to have discussions and meetings with the surveyor and provide information to the lessees and vice versa. For example, he had to deal with the change in the specifications. Once works have started, issues will arise which he would have to deal with. Had this building not had its specific problems, he would have accepted 4 or 5 %.
18. The respondents stated 3 or 4 % would be a reasonable amount.

19. The applicant and respondents agreed that 4% was reasonable.
20. The tribunal notes the proposed fee for the surveyor. However, that is not a matter for the tribunal to determine. The parties agree, and the tribunal confirms, that a fee representing 4% of the cost of the tender is reasonable in amount for the applicant's services in dealing with the major works.

**L Rahman**  
**Tribunal Judge**

**18/7/16**

### **DIRECTIONS**

1. The Management Order dated 1/9/14, made by this tribunal on 19/8/14, be varied to the extent that;
2. With respect to the proposed works only, each flat pay an advance service charge. The amount payable by flat A is £25,000. The amount payable by flats B-E is £30,000 each. Any flat that has previously paid into the reserve fund for the proposed works or is owed any surplus service charge would have that amount deducted / offset from the contribution due. The relevant sums due from each flat is to be paid to the applicant within 28 days from the hearing date and are to be kept by the applicant in his clients' account.
3. With respect to the applicants future fees only; the applicant be entitled to a basic management fee of £750 per flat. The applicant be entitled to an additional charge of £150 per hour pro rata for pursuing arrears and to be paid only by those being pursued for arrears. The applicant be entitled to a fee representing 4% of the cost of the tender for the proposed major works.

## **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).