FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/00HH/LAM/2020/0016**
Property	**:**	**Westwood Villa 111 Abbey Road Torquay Devon TQ2 5NP**
Applicant Leaseholders	**:**	**Mr Matthew House & Mr Graeme Crighton (Flat 3)** **Mr William Mills** **Ms Janice Knowlson**
Proposed Manager	**:**	**Mr Darren Stocks**
Respondent Freeholder	**:**	**Unit-2 Torquay Ltd.**
Type of Application	**:**	**Landlord and Tenant Act 1987, Section 24** **Landlord and Tenant Act 1985, Section 20C**
Tribunal Members	**:**	**Judge M Davey** **Mr W H Gater FRICS MCIArb** **Mr C Davies FRICS**
Date of hearing	**:**	**7 June 2021**
Date of Decision with reasons	**:**	**15 June 2021**

DECISION

Landlord and Tenant Act 1987

The Tribunal determines that the Applicants have made out grounds under section 24 of the Landlord and Tenant Act 1987 for the appointment of a manager of the Building Westwood Villa, 11 Abbey Road, Torquay, Devon TQ2 5NP but that the proposed manager should not be appointed.

Section 20C Landlord and Tenant Act 1985 and Paragraph 5A of

The Tribunal orders under section 20C of the 1985 Act that none of the costs incurred by the Landlord in connection with these proceedings shall be treated as relevant costs for the purpose of any future service charge demand.

The Tribunal orders under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent reimburse the Applicant fees paid to the Tribunal in respect of the Application.

REASONS

The Applications

1. By an application dated 21 December 2020, the Applicants applied to the First-tier Tribunal (Property Chamber) ("the Tribunal"), under section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") for the appointment by the Tribunal of a Manager of the Property ("the AOM Application"). The Applicants also seek an Order under section 20C of the Landlord and Tenant Act 1985 preventing the Landlord from recovering the whole or part of the costs of these proceedings by way of a future service charge demand. The Applicants are Mr Matthew House and Mr Graeme Crighton, the joint lessees of Flat 2 Westwood Villa 111 Abbey Road Torquay Devon TQ2 5NP; Mr William Mills, the lessee of Flat 3 Westwood Villa and Ms Janice Knowlson, the lessee of Flat 5 Westwood Villa.

2. The Respondent to the Applications is Unit -2 Torquay Limited, being the freeholder landlord of the Building containing the flats. On 19 January 2021, Mr D. Banfield FRICS (Regional Surveyor of the Tribunal) issued Directions in which it was stated that a hearing of the Applications by way of a video platform would take place, at which the proposed manager would be expected to attend.

3. The Tribunal considered the Applications on 08 June 2021, following the Hearing that day. The Hearing was held at 10.00 a.m. and the following persons were present. The Applicants, Mr House and Mr Crighton and Ms Knowlson; the proposed manager, Mr Darren Stocks and members of the public, Ms Louise Holder and Mr Peter Dean who attended by way of an

interest in tribunal proceedings. Mr House represented the Applicants. The Respondent was neither present nor represented.

The subject property

4. The Building, which the Tribunal did not inspect, is stated to be a converted hotel in Torquay (the former Westwood Hotel) containing 8 flats. The Applicants hold their respective flats under 999 year leases and the remaining Flats are understood to have been retained by the Respondent landlord who lets them out on short term tenancies.

5. The eight flats are in a single storey building originally annexed to the main part of the hotel, towards the rear.

The Lease

6. The Tribunal was provided with a copy of the lease of Flat 2, a ground floor flat, dated 21 June 2018. The parties to the Lease are the Landlord, Unit-2 (Torquay) Ltd whose registered office is stated to be at 44 Abbotts Park, Cornwood, Ivybridge PL21 9PP and the Tenant, Matthew John House and Graeme William Robb Crighton.

7. The Lease was granted for a term of 999 years from 1 January 2018 in consideration of a premium of £110,000 and an annual rent of £200 payable on 25 March each year and reviewable in accordance with schedule 8 to the Lease (which links increases to changes in RPI). The Rent Commencement Date is specified as 21 June 2028 and the Review Date as 21 June 2039 and every 21st anniversary thereafter

8. Clause 5 of the Lease obliges the Tenant to observe and perform the Tenant covenants (as set out in Schedule 4 to the Lease). Paragraph 2.1 of that Schedule provides that "the Tenant shall pay the estimated Service Charge for each Service Charge Year in two equal instalments on the 25 March and 29 September in (sic) year." (It seems that this was meant to state "each year"). Paragraph 2.3 of Schedule 4 provides that if at the end of the year the estimated Service Charge proves to be less than the Service Charge the Tenant shall pay the difference on demand, whereas if the estimated charge is more than the Service Charge, the Tenant is to be credited with the difference against the Tenant's next instalment of the estimated Service Charge. Paragraph 3.1 of Schedule 4 obliges the Tenant to pay to the Landlord the Insurance Rent demanded by the Landlord under paragraph 2 of Schedule 6 to the Lease by the date specified in the Landlord's notice.

9. Clause 1.1 of the Lease defines

"Common Parts" as

a) the front door, entrance hall, passages, staircases and landings of the Building; and

b) the external paths, driveways, yard, staircases, garden areas and Refuse Area at the Building;

that are not part of the Property or the Flats and which are intended to be used by the tenants and occupiers of the Building.

"Insurance Rent" as:

(a) "the Tenant's Proportion of the cost of any premiums (including any IPT) that the Landlord expends (after any discount or commission is allowed or paid to the Landlord) and any fees and other expenses that the Landlord reasonably incurs, in effecting and maintaining insurance of the Building in accordance with its obligations in paragraph 2 of schedule 6 including any professional fees carrying out any insurance valuation of the Reinstatement Cost;

(b) the cost of any additional premiums (including any IPT) and loadings that may be demanded by the Landlord's insurer as a result of any act or default of the Tenant any undertenant, their workers, contractors, or agents or any person at the Property with the express or implied authority of any of them."

"Insured Risks" as:

"Fire, explosion, lightning, earthquake, storm, flood, bursting and overflowing of water tanks, apparatus or pipes, escape of water or oil, impact by aircraft and articles dropped from, impact by vehicles, riot, civil commotion, malicious damage, theft or attempted theft, falling trees and branches and aerials, subsidence, heave, landslip, collision, accidental damage to underground services, public liability to anyone else and any other risks which the Landlord decides to insure against from time to time and Insured Risk means any one of the insured risks."

"Retained Parts" as "all parts of the building other than The Property and the Flats including

(a) the main structure of the Building including the roof and roof structures, the foundations, the external walls and internal load-bearing walls, the structural timbers, the joists and guttering;
(b) all parts of the Building lying below the floor surfaces or above the ceilings;

(c) all external decorative surfaces of (i) the Building (ii) the external doors (iii) the external door frames and (iv) the external window frames;
(d) the Common Parts;
(e) the Parking Spaces;
(f) the Service Media at the Building which do not exclusively serve either the Property or the Flats; and
(g) all boundary walls fences and railings of the Building."

"Service Charge" as "The Tenant's Proportion of the Service Costs"

"Service Costs" as "the costs listed in Part 2 of Schedule 7, that is to say the total of

(a) all of the costs reasonably and properly incurred or reasonably and properly estimated by the Landlord to be incurred of:

    (i) providing the Services;
    (ii) the supply and removal of electricity, gas, water, sewage and other utilities to and from the Retained Parts;
    (iii) complying with the recommendations and requirements of the insurers of the building (insofar as those recommendations and requirements relate to the Retained Parts);
    (iv) complying with all laws relating to the Retained Parts, their use and any works carried out at them, and relating to any materials kept at or disposed off from the Common Parts
    (v) complying with the Third Party Rights insofar as they relates to the Retained Parts;
    (vi) putting aside such sum as shall reasonably be considered necessary by the Landlord (whose decision shall be final as to questions of fact) to provide reserves or sinking funds for items of future expenditure to be or expected to be incurred at any time in connection with providing the Services; and
    (vii) taking any steps (including proceedings) that the Landlord considers necessary to prevent or remove any encroachment over the Retained Parts or to prevent the acquisition of any right over the Retained Parts or the Building as a whole) or to remove any obstruction to the flow of light or air to the Retained Parts (or the Building as a whole);

(b) the costs fees and disbursements reasonably and properly incurred of:

    (i) managing agents employed by the Landlord for the carrying out and provision of the Services or, where managing agents are not employed, a management fee for the same;

(ii) accountants employed by the Landlord to prepare the and audit the service charge accounts; and

(iii) any other person reasonably and properly retained by the Landlord to act on behalf of the Landlord in connection with the Building or the provision of Services.

(c) all rates, taxes, impositions and outgoings payable in respect of the Retained Parts, their use and any works carried out on them (other than any taxes payable by the Landlord in connection with any dealing with or disposition of its reversionary interest in the Building); and

(d) any VAT payable by the Landlord in respect of any of the items mentioned above except to the extent that the Landlord is able to recover such VAT.

"Services" as the services to be provided by the Landlord and listed in part 1 of Schedule 7 to the Lease, that is to say

(a) cleaning, maintaining, decorating, repairing and replacing the Retained Parts and remedying any inherent defect;

(b) providing heating to the internal areas of the Common Parts during such periods of the year as the Landlord reasonably considers appropriate, and cleaning, maintaining, repairing and replacing the heating machinery and equipment;

(c) lighting the Common Parts and cleaning, maintaining, repairing and replacing lighting, machinery and equipment on the Common Parts;

(d) cleaning, maintaining, repairing and replacing the furniture, fittings and equipment in the Common Parts;

(e) cleaning, maintaining, repairing, operating and replacing security machinery and equipment (including closed-circuit television) on the Common Parts;

(f) cleaning, maintaining, repairing, operating and replacing fire prevention, detection and fighting machinery and equipment and fire alarms on the Common Parts;

(g) cleaning, maintaining, repairing and replacing refuse bins on the Common Parts;

(h) cleaning the outside of the windows of the Building,;

(i) cleaning, maintaining, repairing and replacing signage for the Common Parts;

(j) maintaining any landscaped and grassed areas of the Common Parts;

(k) cleaning, maintaining, repairing and replacing the floor coverings on the internal areas of the Common Parts; and

(l) any other service or amenity that the Landlord may in its reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the tenants and occupiers of the Building."

"The Tenant's Proportion" as: "12.5% or such other percentage as the Landlord may notify the Tenant from time to time."

10. By paragraph 2 of Schedule 6 to the Lease the Landlord covenants

2.1 to effect and maintain Insurance of the Building against loss or damage caused by any of the Insured Risks with reputable insurers, on fair and reasonable terms that represent value for money, for an amount not less than the Reinstatement Cost subject to

(a) any exclusions, limitations, conditions or excesses that may be imposed by the Landlord's insurer and
(b) insurance being available on reasonable terms in the London insurance market

2.2 To serve on the Tenant a notice giving full particulars of the gross cost of the insurance premium payable in respect of the Building (after any discount or commission but including IPT). Such notice shall state:

(a) the date by which the gross premium is payable to the Landlord's insurers and
(b) the Insurance Rent payable by the Tenant, how it has been calculated and the date by which it is payable.

2.3 In relation to any insurance effected by the Landlord under this clause, the Landlord shall

(a) at the request of the Tenant supply the Tenant with:

(i) a copy of the insurance policy and schedule; and
(ii) a copy of the receipt for the current year's premium

(b) notify the Tenant of any change in the scope, level or terms of cover as soon as reasonably practicable after the Landlord has become aware of the change:

(c) use reasonable endeavours to procure that the insurance policy contains a non-invalidation provision in favour of the Landlord in respect of any act or default of the Tenant or any other occupier of the Building and;

(d) procure that the interest of the Tenant and its mortgagees are noted on the insurance policy, either by way of a general noting of tenants' and mortgagees' interests under the conditions of insurance policy or (provided that the Landlord has been notified of any assignment to the Tenant pursuant to Paragraph 9.6 of Schedule 4) specifically.

11. By Paragraph 4 of Schedule 6 to the Lease the Landlord covenants

4.1 Subject to the Tenant paying the Service Charge to provide the Services.

4.2 Before or as soon as possible after the start of each Service Charge Year the Landlord shall prepare and send the Tenant an estimate of the Service Costs for that Service Charge Year and a statement of the estimated Service Charge for that Service Charge Year.

4.3 As soon as reasonably practicable after the end of each Service Charge Year, the Landlord shall prepare and send to the Tenant a certificate showing the Service Costs and the Service Charge for that Service Charge Year.

4.4 To keep accounts, records and receipts relating to the Service Costs incurred by the Landlord and to permit the Tenant, on giving reasonable notice, to inspect the accounts, records and receipts by appointment with the Landlord (or its accountant or managing agents).

4.5 If any cost is omitted from the calculation of the Service Charge in any Service Charge Year, the Landlord shall be entitled to include it in the estimates and certificates of the Service Charge in any following Service Charge Year. Otherwise, and except in the case of manifest error, the Service Charge certificate shall be conclusive this to all matters of fact to which it refers.

The Applicants' case.

12. The reason for the Tribunal proceedings is summarised in the Application as follows. First, that the Landlord has not provided any Services, in breach of the Landlord's covenant in the Lease. Second that the Landlord has not demanded estimated or final Service Charges for any period since the Applicants acquired their leases. Third that the Landlord has not demanded any Insurance Rent nor provided any evidence that the Building has been insured in accordance with the terms of the Lease. Indeed, the Applicants state that despite notice from the Tenants to the Landlord of disrepair to Common Parts within the Landlord's repairing obligation, no such repairs have been carried out.

13. The Applicants also allege more particularly that as the 'responsible person' under The Regularly Reform Act (Fire Safety) Order 2005 the Landlord has not ensured that a Fire Risk Assessment has been carried out for the Building. They state that fire prevention equipment at the address has not been checked regularly or maintained. Furthermore, that the communal door at the property has not been maintained properly and does not always open if the door swells in bad weather, which greatly increases the risk of serious harm to persons inside the building in case of a fire. The Applicants argue that leaks said to be caused by the external lack of maintenance have caused Flat 5 to be without a fire alarm due to water coming through the electric wired smoke alarm which currently has had to be disconnected.

14. The Applicants also state that, contrary to the requirement in section 21 of the Landlord Tenant Act 1985, the Landlord has not provided a summary of the Service Charge accounts to the leaseholders when requested to do so on numerous occasions.

15. The Applicants submit that in breach of section 30A and paragraph 2 of the Schedule to the Landlord and Tenant Act 1985, the Landlord has failed to provide the leaseholders with a copy of the Building Insurance cover for the property when requested to do so.

16. In their Application the Applicants provided the following narrative account of the problems that they have encountered and their attempts to resolve those problems with the Landlord.

17. At the time of purchase the leaseholders, Mr House and Mr Crighton, paid £164 in advance for service charges for the period June to September 2018. However, during this period, the Landlord, despite the terms of the Lease, failed to provide the necessary Services. Since the signing of the Lease no demands have been made for Service Charge payments, advance or otherwise.

18. In November 2018, Mr. House and Mr. Crighton contacted Mr. Tim Bacon (a then Director of Unit-2 (Torquay) Ltd) regarding rainwater coming through the external wall into their living room. They highlighted that the

leak was caused by external rendering, which needed maintenance. Despite several emails and letters sent to Mr Bacon over the next few months, no action was taken to rectify this matter.

19. In March 2019, Mr. Bacon contacted Mr House and Mr Crighton informing them he would no longer be involved in the management of Westwood Villa. He advised them to contact Mr. John Smethurst (a Director of Unit-2 (Torquay) Ltd.) with regard to any further queries. Mr Bacon confirmed that he had passed the complaint regarding the Services and water coming into Flat 2 from the external wall, to Mr. Smethurst.

20. Following this, Mr House and Mr Crighton, Mrs. Janice Knowlson and Mr. Will Mills sent a letter to Mr. Smethurst, at the company address, regarding the ongoing lack of maintenance at the property, as numerous attempts to contact Mr. Smethurst by phone had been unsuccessful. The letter requested confirmation that building insurance was in place for the building, as this was not clear due to Mr. Smethurst's lack of response sregarding the payment of service charges. The letter also highlighted that the ongoing issues with regard to the external wall and the drainpipe had still not been rectified. The letter outlined that the communal front door to the property was in a state of disrepair. The leaseholders requested resolution of all these issues.

21. In April 2019, Mr. House and Mr. Crighton wrote to Mr. Smethurst referring to their unsuccessful attempts to set up a meeting with him in order to resolve the ongoing issues with the lack of maintenance at the property. In this letter, they reiterated that they wanted to make payment for the building insurance and service charges. They requested details of any amount due and confirmation of how to pay the outstanding charges.

22. In June 2019, they again wrote to Mr. Smethurst regarding the outstanding service charges. They requested bank details from Mr Smethurst to allow for payment of the service charges/Building insurance. They requested a copy of the building insurance and confirmation that Mr. Smethurst was in fact the freeholder.

23. In July 2019, they wrote to Mr. Smethurst again regarding his lack of contact and repeated their requests for an invoice for the service charges and the building insurance and for his bank details so that any outstanding amounts could be paid. They highlighted that some of the lights were not working in the communal areas. They also raised the fact that the fire alarm system had not been maintained for some time according to the records.

24. In November 2019, Mr. House, Mr. Crighton and Mrs. Janice Knowlson wrote to Mr. Smethurst requesting an update on maintenance at the property. They raised concerns regarding safety issues due to water damage on the wall where the fire alarm panel was. They again highlighted that the fire alarm system had not been tested since July 2018 and the records were not up to date. They repeated concerns about the external

wall and the leak. They referred to their repeated requests for Mr Smethurst's bank details in order to make payment for the Service charges. They requested a copy of the Building insurance to be sent to them.

25. In March 2020, Mrs. Sarah Kirwan, the daughter of Janice Knowlson, (who provided a witness statement) wrote to Mr. Smethurst on her mother's behalf, regarding urgent maintenance issues at the property, i.e a water leak, safety issues regarding the fire alarm and the communal front door jamming, no maintenance and cleaning. She requested an urgent response to resolve the issues. Mrs Kirwan also requested a copy of the building insurance and fire safety risk assessment for the building. She highlighted that given the current COVID outbreak the matters were particularly urgent. She did not receive any response to this letter.

26. In March 2020, Mr. House and Mr. Crighton wrote to Mr. Smethurst regarding all the previous issues raised and his ongoing lack of response. They highlighted that the communal front door was in such disrepair that it was causing difficulty for tenants to be able to open it, leading to a fire risk. They highlighted the lack of cleaning in the communal areas for a year and a half. They repeated the request for a copy of the Building insurance and for Services to be put in place. They raised concerns that this was in fact breaching the Lease by not providing a copy of the Building insurance and not providing an estimate of the Service Costs. The letter also highlighted that the ongoing situation was causing stress to Mr. House and Mr. Crighton.

27. To date, none of the Applicants have had a response from the Landlord Company or Mr Smethurst with regard to their properties and the concerns raised. The leaseholders sought advice from the Leasehold Advisory Service, who advised making an application to the First Tier Tribunal for the appointment of a manager.

28. A Section 22 notice was addressed to and sent to Unit-2 (Torquay) Ltd on 20 November 2020 at the business address. The notice set out the breaches of the Lease and the action required to remedy the ongoing situation. The Landlord failed to reply.

29. On 02 October 2020, Mrs. Knowlson of Flat 5, again had water coming through her ceiling through the smoke alarm which she has had to disconnect due to safety concerns. Mrs. Knowlson contacted Mr. Smethurst by phone on the same day and left a message requesting urgent contact regarding the leak to her property. To date, she has not received a response.

30. This placed Mrs. Knowlson at risk due to not having a working smoke alarm and due to these urgent safety concerns, a home fire safety visit was requested and carried out by the Devon and Somerset Fire and Rescue service on the same day.

31. The Applicants state that Mrs. Knowlson, is 74 and has ongoing health issues. They state that the ongoing lack of management has caused a great

deal of stress to all the leaseholders, who are anxious for matters to be resolved as soon as possible and for a responsible manager to be appointed for the building.

32. Finally, the Applicants highlight that there is no Covid 19 safe signage in the communal areas including the Bin shed area to help keep everyone safe and also no cleaning in approximately the past 2 years.

The Proposed Manager

33. In the Directions of 19 January 2021 the Tribunal directed that the applicants provide a written statement of the residential management experience of the proposed manager, together with the management plan and details of any professional indemnity insurance.

34. The Applicants duly supplied a written statement and CV provided to them by Mr Darren Stocks. The CV stated that from 1989 to 1991 he had worked in Crown Estates, Cardiff dealing with estate management queries on various types of estates from small to large. From 1991 to 1993 he was manager of the estate management department of Foremans Estate Agents Torquay, dealing with both leaseholders and freeholders. Since 1994 he had been sole proprietor of Crown Property Management specialising in all aspects of estate management. He had passed the Grade 1 and Grade II examinations of the Institute of Property Management. Mr Stocks stated that he currently deals with leasehold disputes, service charge budgets for board/freeholder approval, liaising with tradesmen, freeholders and directors of RMCs on a daily basis.

35. In his written statement Mr Stocks set out his proposed management plan as follows:

- I can confirm that we would attend AGM's & EGM's and act as Manager and issue the necessary notices under Company Law. We would also have regular contact with the leaseholders by meetings, phone, zoom, email and post
- To keep the residents fully updated in terms of compliance and property law representing good Estate management.
- We will undertake regular Inspections of the Estate accordingly.
- At the beginning of each financial year we will set a budget for the service charge . Invoices would then be sent to all owners in accordance with the lease to ensure their funds are collected appropriately & efficiently. Your funds would be held in a Trust Account by us in order to pay specific items such as building insurance, common parts cleaning, electricity and so on.
- On production of a set of accounts we will then call an AGM to discuss finances, as well as statutory items required under Company Law. We can then show you how your service charges have been spent compared to the budget.
- We can also arrange to send you quarterly income & expenditure reports.
- This office will oversee any works unless specialist knowledge of the

work is required in which case, we can ensure that a building Surveyor is employed on your behalf. For such items as, external decoration we would of course obtain quotations for board approval accordingly.

The Respondent's case

36. The Respondent did not respond to the Section 22 notice, the Application or comply with the Tribunal Directions. The Respondent therefore made no oral or written submissions to the Tribunal.

Discussion and determination

37. The Applicants, by way of an application to the Tribunal under section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") seek the appointment by the Tribunal of Mr Darren Stocks of Crown Property Management, 135 Reddenhill Road, Torquay, TQ1 3NT as Manager of the Building, Westwood Villa. The Applicants have served a valid preliminary notice on the Landlord under section 22 of the 1987 Act.

38. Section 24(2) of the 1987 Act provides, so far as relevant to the present case, that the Tribunal may make an order where it is satisfied that (1) the Landlord 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 and that it is just and convenient to make the order in all the circumstances of the case (s.24(2)(a) (i) and (iii)); (2) that the Landlord 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 that it is just and convenient to make the order in all the circumstances of the case (s.24(2)(ac)(i) and (ii)); (3) other circumstances exist which make it just and convenient for the order to be made (s.24(2)(b)).

39. The Applicants rely principally on two grounds. The first relates to the insurance of the Building and the second relates to the operation of the Service Charge. The Applicant submit that a reasonable landlord would have been able to satisfactorily demonstrate that the required buildings insurance was in place and that he had complied with the covenants of the Lease in terms of the buildings insurance.

40. The Applicants further submit that any reasonable landlord would ensure that services are provided for their property, maintain accounts and receipts and be able to make these available to their tenants as required by the lease. The Respondent has provided no service charge accounts or any formal demands for payments. The Applicants believe that no working relationship exists between themselves and the Landlord and that the current situation cannot be resolved other than by the appointment of a manager by the Tribunal. The Applicants say that the Landlord has behaved unreasonably in refusing to provide satisfactory answers, indeed any answers, to reasonable questions with regard to the nature and extent of insurance cover and other service matters, including fire safety and disrepair to Common Parts.

41. The Applicants produced correspondence with the Landlord, which evidenced their willingness to resolve the outstanding issues with regard to the management of the Building and the services by agreement, without the need to resort to the remedy of appointment of a manager or an application to the Tribunal. The Landlord did not take up these offers. The Applicants also supplied as part of their case photographic evidence produced by Mr Matthew House as to the state of the Building together with a witness statement by Janice Knowlson. In her statement Mrs Knowlson confirmed that her attempts to contact the Landlord to report external disrepair that was causing water leaks in her flat had met with no response from the Landlord.

42. The Tribunal is satisfied that the circumstances are as outlined by the Applicants in their Application and in these circumstances have made out grounds, under section 24(2)(a)(i), (ac) and (b) of the 1987 Act for the appointment of a manager of the Building.

43. The Applicants have produced ample, convincing and uncontested evidence that the Landlord Company has not managed the Building in accordance with the terms of the Lease. It has failed to provide any services and charges for the same and has also failed to demand Insurance Rent in accordance with the terms of the Lease or demonstrate that the Building has been insured in accordance with the Lease The Applicants have made numerous attempts from the beginning of their Leases to put the operation of the service charge provisions of the Lease on a satisfactory footing but the Landlord has not responded in to those overtures or accepted offers by the Tenant to settle the matter without the need to resort to the Tribunal.

44. It would appear that the Respondent Company has only one Director, Mr John Smethurst, who is a solicitor in practice at Phoenix Solicitors and Advocates Ltd., Torquay. Mr Smethurst has inexplicably, not only failed to respond on behalf of the Company to the Applicants, but has also disregarded all communications from the Tribunal. Mr Crighton said that when he handed a notice to him in person he simply took the notice but made no further response save to comment "he had inherited a nightmare."

The proposed manager

45. At the hearing the Tribunal questioned Mr Stocks as to his qualifications; his willingness to act and the terms on which he would manage the Building, were he to be appointed. 45. Mr Stocks confirmed that, as stated in his written statement, his proposed fee was £170 per unit per annum plus VAT amounting to £1,632 including VAT. In his statement Mr Stocks stated, "I have undertaken an assessment of the Estate and the service charge payable and we would (*sic.)* in the region of £900 per year to include full management. This amounts to an annual budget of £7,200. Mr Stocks said that the Building is a single story rectangular structure and the communal areas are not extensive.

46. Mr Gater asked Mr Stocks if he appreciated the difference between being a managing agent and a Tribunal appointed manager. Mr Stocks replied that he did and that the latter would be responsible to the Tribunal rather than either party. Mr Stocks stated that he was an Associate Member of the RICS. When asked about his RICS qualification, Mr Stocks replied that he had qualified "about four years ago" and that Crown Property Management was regulated as a firm by the RICS.

47. Mr Stocks stated that he anticipated that his role would include attending at any Tribunal hearings and initiating any major works projects including the section 20 Landlord and Tenant Act 1985 consultation procedure, for none of which he proposed to levy extra charges. He said he was aware that the Applicants were of limited means.

48. The Tribunal then questioned Mr Stocks about his experience, if any, as a Tribunal appointed manager. He said that a tribunal had appointed him, around 30 months ago, as manager of a 50-unit development in Bristol, which he had managed successfully in accordance with the Lease. He said that he had attended residents' meetings and provided a half yearly report to the Tribunal. When asked to identify the case, and whether he had a copy of the decision to hand, he said he did not have the decision to hand and could not recall the address but that it was something like Parkside Quay or possibly 123 Project Square.

49. Following the Hearing, the Tribunal, having been unable to identify either of the addresses or the case referred to by Mr Stocks, asked him for further details. He responded that he had been confused in the Hearing and that the case he was thinking of was actually a Right to Manage application. Indeed he had already emailed the Applicants explaining the error and told them that if it were queried (i.e. by the Tribunal) he would of course need to explain the confusion. In his reply to the Tribunal Mr Stocks stated that he had not intended to mislead the Tribunal.

50. It should be emphasised that the appointment is one made by the Tribunal to whom the manager appointed is answerable. The present case is unusual in that the freeholder has made no attempt whatsoever to manage the Building since it had granted leases to the Applicants.

51. As the Tribunal pointed out to Mr Stocks, whoever is appointed as manager will be faced with the position that he or she can only be assured of payment of service charge in respect of 3/8 of the necessary outlay. (Mr Stocks does not address the matter of who should be ordered to pay his fee). The Respondent has lamentably and inexplicably failed to engage with both the Applicants and the Tribunal and it may therefore prove necessary for any manager to take further legal proceedings against the Respondent. Mr Stocks says that given that Mr Smethurst is a solicitor he must realise that it is in the interests of his company (of which he has control) to protect its investment. However, the Tribunal considers that the evidence to date does not inspire confidence that this this will prove to be the case.

52. Mr Stocks has set out in his statement what he considers his duties would be, were he to be appointed. Unfortunately this appears to be a standard set of duties that one might expect of a managing agent rather than a management plan tailored to the needs of this specific property in the light of its history and present circumstances. It does not provide a report on the property, identifying the necessary steps to be taken nor does it provide a draft budget with specific management plans, to be incorporated in an order, which need not be confined to the requirements of the Lease. The Tribunal considers that it will need robust management to deal with the situation at Westwood Villa if the problems with which the Applicants are faced are to be satisfactorily resolved.

53. Having read his written statement and his oral evidence, the Tribunal has regrettably decided that it is unable to appoint Mr Stocks as the manager of Westwood Villa. It is regrettable because the matter is urgent and the Applicants have made a compelling case for the need of a Tribunal appointed manager. This is particularly so in relation to insurance and repairs. Furthermore, the marketability of the flats is seriously compromised as the Applicants have discovered.

54. The Tribunal will therefore adjourn this part of the Application, which will not affect the finding that a case has been made out for the appointment of the Manager. This leaves it open to the Applicants to return to the Tribunal as soon as possible with an alternative proposed manager for appointment by the Tribunal.

The Section 20C Application

55. The Applicant having been successful in respect of both Applications the Tribunal determines that an Order be made under section 20C of the Landlord and Tenant Act 1985, preventing the Landlord from recovering under the Lease any costs incurred in connection with these proceedings by way of any future service charge or administration charge demand. This order is made notwithstanding the fact that no such costs appear to have been incurred, the landlord not having responded to the Application.

The Applicant's fees

56. For the same reasons the Tribunal orders under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent reimburse the Applicant the fees paid by them to the Tribunal in respect of the Applications.

Right to 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 by email to rpsouthern@justice.gov.uk 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, that 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.

Annex: The relevant statute law

Landlord and Tenant Act 1985

Section 20C provides that

(1) a tenant may make an application for an order that all or any of the costs incurred or to be incurred by the landlord in connection with proceedings before the First-tier Tribunal are not to be regarded as relevant costs to be taken into account when determining the amount of service charge payable by the tenant or any other person or persons specified in the application.

.....

(4) the tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Landlord and Tenant Act 1987

21 Tenant's right to apply to [tribunal] for appointment of manager.

(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 (c. 56) applies.

(4) An application for an order under section 24 may be made—

(a) jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section, and

(b) in respect of two or more premises to which this Part applies;

and, in relation to any such joint application as is mentioned in paragraph (a), references in this Part to a single tenant shall be construed accordingly.

(5) Where the tenancy of a flat contained in any such premises is held by joint tenants, an application for an order under section 24 in respect of those premises may be made by any one or more of those tenants.
(6) An application to the court for it to exercise in relation to any premises any jurisdiction to appoint a receiver or manager shall not be made by a tenant (in his capacity as such) in any circumstances in which an application could be made by him for an order under section 24 appointing a manager to act in relation to those premises.
(7) References in this Part to a tenant do not include references to a tenant under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.
(8) For the purposes of this Part, "appropriate tribunal" means—
(a) in relation to premises in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
(b) in relation to premises in Wales, a leasehold valuation tribunal.

22 Preliminary notice by tenant.
(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) The appropriate tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the

person, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

(4) In a case where—

(a) a notice under this section has been served on the landlord, and

(b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage,

the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.

23 Application to court for appointment of manager.

(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.

(2) . . . . . .

24 Appointment of manager by tribunal.

(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;

(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) 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 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 of those 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) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—

(a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

(b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

(8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.

(9A) The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—

(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and

(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

(10) An order made under this section shall not be discharged by the appropriate tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.