FIRST-TIER Tribunal
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/30UF/LAM/2020/0007**
HMCTS code (audio,video,paper)	**:**	**V:FVHREMOTE**
Property	**:**	**Singleton Hall, Lodge Lane, Singleton FY6 8LT**
Applicants	**:**	**Richard Riding and Kenneth Carter**
Representative	**:**	**Brabners LLP**
Respondents	**:**	**Singleton Hall Management Company Limited and various leaseholders**
Representative	**:**	**Roland Robinsons and Fentons LLP**
Type of Application	**:**	**Landlord and Tenant Act 1987 – s 24(1)** **Landlord and Tenant Act 1985 – s 20C**
Tribunal Members	**:**	**Judge J.M.Going and** **J.Faulkner FRICS**
Date of hearing	**:**	**29 September 2021**
Date of decision	**:**	**27 October 2021**

DECISION

Covid -19 pandemic: description of hearing:

This has been a remote Full Video Hearing which has been consented to by the parties. The form of remote hearing was V.FVHREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to were in a series of electronic document bundles, statements, photographs and submissions as described below, the contents of which were noted.

The Decision

The Tribunal decided that: –
1. the Application for a manager to be appointed be dismissed,
2. it would not be just and equitable for an order to be made under Section 20(c) of the Landlord and Tenant Act 1985,
and
3. there should be no order for costs in the present proceedings.

Preliminary and background

1. By an Application ("the Application") dated 5 October 2020 the Applicants, Mr Riding and Mr Carter, applied to the First-Tier Tribunal Property Chamber (Residential Property) ("the Tribunal") for the appointment of a new manager in respect of the development known as Singleton Hall, Lodge Lane Singleton Lancashire ("Singleton Hall").

2. By a separate application dated with the same date they also applied for an order under Section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") that all or any of the costs incurred, or to be incurred, by the landlord in connection with the proceedings should not be regarded as relevant costs in determining the amount of any service charge payable.

3. Singleton Hall was originally built in the 1870s and converted into of 21 residential apartments in or around 2003 – 2004. Mr Riding and Mr Carter are the owners and long leaseholders of 2 of those apartments.

4. The First Respondent is Singleton Hall Management Company Limited ("SHMC") which owns the freehold. Each apartment owner is a member or shareholder in SHMC. The remaining Respondents are all apartment owners.

5. On 14 May 2021 the Respondent's representative made application to strike out the Application pursuant to Rule 9 of The Tribunal Procedure (First-tier Tribunal Property Chamber) Rules 2013 ("the Procedure Rules") which was rejected.

6. The parties supplied a wealth of paperwork extending to over 1300 pages (albeit with some duplications). These included the Applicants' and Respondents' statements of case, the Applicants' statement of case in reply, various bundles including witness statements, emails, letters, minutes of meetings, SHMC's articles, the lease, land registry entries, management agreements, various experts reports obtained overtime in respect of fire risk assessments, the property's repair and structure, drainage system and tree surveys, budgets and legal authorities. Various papers were submitted by both parties' representatives in the days immediately before and on the eve of the hearing. It was clear however that each had received and considered the other's written submissions before the hearing.

7. All of the written evidence was carefully considered by the Tribunal - in part, before the hearing (where there was time) and during the hearing (where it was referred to), and also, in full, after it. The oral evidence at the hearing was also carefully considered.

8. Because of the extent of the paperwork, which is on record and which the parties have access to, it would be superfluous and, in the Tribunal's opinion particularly because of their respective entrenched positions, counter-productive to attempt to relate its full detail in this decision.

9. The Tribunal has highlighted only those issues which it found particularly relevant to, and to help explain, its decision-making.

10. The following facts and timeline of events are confirmed from an analysis of the papers. None have been disputed, expect where specifically referred to.

The early 1870s	Singleton Hall is built for TH Miller, the son of a prominent Preston industrialist, and his family.
2003-2004	Singleton Hall is restored, altered, extended and redeveloped and converted into 21 flats by Crosby Homes Ltd ("Crosby").
3 May 2006	SHMC is incorporated and its articles adopted.
In or around 2006	Fords Residential Management ("Fords") are appointed by Crosby as Managing Agents.
2009	Crosby is bought by Lend Lease Corporation.
24 June 2015	Land Registry entries confirm the transfer of the freehold title number LA926246 to SHMC.
January 2017	Fords are replaced as Managing Agents by Mainstay Group Limited ("Mainstay") as appointed by Lend Lease.
June 2018	Both Mr Riding and Mr Carter are appointed as directors of SHMC.
1 April 2019	Mainstay are replaced as Managing Agents by Homestead Consultancy Services Limited ("Homestead") as appointed by SHMC.

3 July 2020	Homestead tenders its resignation as Managing Agents
27 July 2020	A majority of members of SHMC vote to remove Mr Riding and Mr Carter, together with Mr Worth as directors of SHMC.
27 August 2020	Mr Riding and Mr Carter serve notice under Section 22 of the Landlord and Tenant Act 1987 ("the 1987 Act").
2 October 2020	Hive Management Ltd ("Hive") are appointed by SHMC as Managing Agents in succession to Homestead.
5 October 2020	The Applications for a new manager and a Section 20C order are dated and remitted to the Tribunal.
Assumed to be late in December 2020	Hive tenders its resignation stating inter alia "…since being appointed it has become increasingly apparent to us that there are significant divisions among both directors and leaseholders… resulting in a situation and atmosphere that makes it impossible for us carry out the role that we were employed to do"
15/16 March 2021	Fords are appointed by SHMC as Managing Agents in succession to Hive.

11. A Full Video Hearing was held on 29 September 2021. Mr Alderson, a solicitor and partner with Brabners LLP, represented Mr Riding and Mr Carter who were also present. Mr Evans, a solicitor and partner with Roland Robinsons and Fentons LLP, represented SHMC and the other Respondents, of whom Mrs Yates, Mr Hulme and Mr Townson were also present. Also in attendance were Mr Ford of Fords, and Mr Brook whose company, Rowan Building Management Ltd ("Rowan"), Mr Riding and Mr Carter wish to have appointed as manager of Singleton Hall.

12. The Tribunal did not inspect Singleton Hall but was assisted by the various exhibited photographs and detailed reports. Arup, a large multinational firm providing engineering and other services, which inspected and reported on Singleton Hall both in 2016 and 2017 described it as "now comprising 21 apartments in total set on ground, first second and third floor levels (7,7,5 and 2) with a small basement area set almost entirely below one ground floor apartment within the original building footprint". Their general description of the original element of the building refers (inter alia) to a redbrick façade with natural stone features of local sandstone, a natural state roof and sash windows all in "early Victorian Gothic style". Reference is also made to a small octagonal tower and square tower at the eastern end of the original building, as well as the building materials used in the new extension. It is understood that the Hall which is Listed is set in approximately 17 acres of parkland.

The Common Lease

13. It is agreed between the parties that that each of the apartments is held under a common form of long lease ("the Lease") whereby each leaseholder owns the residue of a 999-year term.

14. The following provisions in the Lease were pertinent to a consideration of the Application.

15. Clause 6 which is headed "Management Company Covenants" states that "Subject to the Service Charge being paid by the Tenant and to compliance by the Tenant with all covenants and obligations on the Tenant's part the Management Company covenants…
6.2 to keep in good and substantial repair reinstate replace and renew the Retained Parts…
6.3 as often is reasonably necessary to decorate the exterior woodwork of the Buildings and the internal communal parts of the apartment building previously decorated in a proper and workmanlike manner and keep all internal communal parts of the apartment building cleaned heated and lighted to a standard which the Management Company may consider from time to time to be adequate
6.4 to keep in good order and stocked with plants as the Management Company may think fit the grounds of the Estate."

Submissions and the Hearing

16. The Applicants submitted that Singleton Hall "is in a poor condition and repair (especially for a property of its standard), including poor decorative condition (internal and external), outstanding roof repairs, a damp and mouldy cellar prone to flooding, flaking bricks, defective security systems, neglected and unsafe grounds and fire risks not properly addressed." A Schedule was provided based on various items identified at the time of the Section 22 notice to which responses and comments had been added to as the proceedings moved forward. Mr Alderson submitted that only a few of the 23 items identified on the Schedule had been properly addressed by the time of the hearing. The Respondents clearly did not agree, noting that some of the works had been started and completed, some were being planned and considered, and others were not considered necessary at that time and some not at all. It was confirmed that works which were considered by SHMC to be adequate and necessary were being carried out. It was emphasised that many of the alleged breaches were evident or occurred whilst Mr Riding and Mr Carter were directors of SHMC i.e. between June 2018 and 27 July 2020.

17. The parties were agreed as to the relevant terms of the Lease but not as to what might constitute "good and substantive repair". Mr Alderson contended that the interpretation of that phrase required an objective assessment and that the Respondents' reply "that the Directors supported by majority of the members considered that there was no breach" in respect of many of the alleged items, was insufficient.

18. The Applicants also submitted that there had been various breaches of the relevant management codes by Homestead, Hive and Fords. The Respondents countered that the "allegations/complaints against Homestead and Hive were historic as they have been replaced"

19. The Applicants' skeleton argument listed the following factors as to why it would be "just and convenient" for the Tribunal to appoint a manager: –

- The property is a unique and sensitive property.
- SHMC has committed serious breaches of covenant.
- SHMC has committed breaches of covenant over a lengthy period.
- SHMC has failed to respond meaningfully to the Section 22 notice.
- Leaseholders (who own SHMC) and (historically) the directors have not been able to reach agreement, which is why the previous managing agents, Hive, resigned and which caused problems for another previous managing agent, Homestead.
- The directors of SHMC are inexperienced and out of their depth. Its current managing agent, Fords is also clearly out its depth and incompetent."

20. Specific issues (which were detailed) were alleged to include the property being in a "poor state of repair, and in some respects, dangerous condition", fire risk assessment, cancellation of external decoration works, failure to implement board decisions, failures to enforce lease terms and data breaches, appointment and removal of directors, issues with Fords as managing agents, and the adverse effect on property values. The Applicants' skeleton argument questioned how far those named as second respondents were involved in the proceedings and asked the Tribunal to treat with "considerable caution and scepticism" assertions that the wishes of the majority had been evidenced. It was also submitted that "majority rule" should not be determinative - "the Act requires the Tribunal to override the wishes of the majority if it is just and convenient to do so".

21. The Respondents' skeleton argument whilst acknowledging Mr Riding and Mr Carter's right to make the Application stated that it was not necessary, because a very substantial majority of the leaseholders (17 out of 21) i.e. 81% opposed it. They pointed out that each apartment has a share in SHMC and that a majority of shareholders could, under its articles, remove the current directors and terminate the managing agents' agreement, if they had the appropriate support.

22. The Respondents submitted that the "current Board of Directors are allowing Fords, who have been in position now six months to manage the property. The directors, supported by 17 tenants, are happy with Fords' work". They also noted that contractually, if Fords' agency was terminated, Fords' fees would nonetheless still be payable until March 2022.

23. They also submitted that the timing of the Section 22 notice and the Application were significant, pointing out that the notice was issued 31 days after Mr Riding and Mr Carter's removal as directors and 16 days after the appointment of Hive, and that the Application was dated 51 days after the appointment of Hive.

24. Mr Evans provided a statement of truth dated 28 September 2021 confirming "I now set out, for the avoidance of any doubt, by whom my firm (and myself) is instructed." He explained that, in error, the owner of apartment 6 had been referred to when filing the Respondents' initial response, which error had been corrected, and that since his initial instructions more apartment owners had instructed his firm to join in opposing the Application. He went on to confirm "the total number of Respondents (Tenants) who have instructed my firm is 17 out of a total of 21… All 17…are aware of…the…application;…the Applicants' statement of case; and…the response. All 17…oppose the…Applicants' applications".

25. The beginning of the Hearing was delayed by connectivity issues and, in the event, Mr Alderson was eventually able to join by telephone, albeit without a video link.

26. The timeline, core events and submissions as referred to above were discussed and amplified at the Hearing.

27. Whilst the Respondents denied that the property "is neglected and in poor condition and repair" it was acknowledged that the decoration was tired, albeit being addressed. Photographs were also exhibited by the Applicants to illustrate that not all the issues they had identified had been fully resolved.

28. Time was spent taking evidence as to how far all of the actions specified in Fire Risk Assessments and in particular the necessary improvements specified to in a letter dated 10 February 2021 from the Lancashire Fire and Rescue Service had been complied with. Mr Ford assisted with various confirmations. It was said that the majority of the requirements had been attended to, all were in hand, but acknowledged that some had not yet been fully completed.

29. Mr Alderson was uncompromising in the criticisms levelled at Fords. He (inter-alia) submitted that they had been dismissed as managing agents in 2017. He was particularly critical of their current management agreement submitting that it should be read as a long-term agreement requiring prior consultation before it was entered into and without which individual leaseholders could not legitimately be charged more than £100 per annum. He said that the agreement made no mention of Fords being a limited company, Stuarts Ltd, and was wrong to refer to various accreditations with the RICS as regards insurance work. He criticised a letter sent by Mr Ford to Mr Riding misconstruing the terms of the lease as regards SHMC's liability for window frames, and submitted that the latest consultation as regards painting had been made invalid by a letter not being sent in time to Mr Carter. He maintained that these and other matters were further examples of Fords being "out of their depth and not up to the job."

30. Mr Ford was allowed, but not compelled, to respond and was eager to. The Tribunal found him candid and articulate in his own defence. He explained that after various problems with the original conversion works had come to light, Fords had been involved in securing various remediation works and an agreement from Lend Lease as to future liability. He said that it was because he was not prepared to accept a settlement, suggested by Lend Lease, where his and Fords' independence would be compromised, that Fords had stepped back in 2017. He confirmed that he was a long-standing member of the RICS, over 16 or more years, and that the short-term lapse in the insurance accreditation was due to an administrative error when completing the online annual renewal forms, which had subsequently been rectified and with the RICS having restored the accreditation. He said that his complaints policy was fully compliant. He explained that Ford Residential Management was the trading name for Stuarts Ltd, this was well-known to SHMC, and that there was no intent to disguise that. He further explained that Ford Management Residential Ltd was a dormant company which he had acquired for the sole purpose of avoiding being it being used by others. If there was felt to be some issue with the present management agreement he would be happy to rescind that and reissue it. He referred to Fords managing approximately 3500 units in 125 schemes and confirmed that it had professional indemnity insurance cover of £1.25 million. He disputed the assertion that management breaches were the sole explanation for a fall in property values and gave interesting insights as to how newly converted flats being sold off plan can result in an over bid. He confirmed that with the directors he was actively managing the property, mentioning amongst other things having an excellent relationship with the gardeners and that the decoration works both inside and outside were just about to start.

31. Mr Brook was questioned extensively by the Tribunal, which was grateful for his attendance. He expanded on and confirmed the evidence given in his Witness Statement made in March 2021. That confirmed that he is the Managing Director of Rowan, which is a member of the Property Redress Scheme and set out his and his teams experience in managing commercial, residential and mixed-use properties across the North West. It confirmed "Rowan currently manages 45 commercial buildings, 35 residential blocks and 7 mixed blocks" "Rowan's annual fee for managing Singleton Hall in accordance with the services to be set out in its management agreement will be £6000…. Any additional work, such as Section 20 consultations will be charged at £40/hour". It was confirmed that Rowan had various insurance cover (including directors liability, employers liability, and public liability) as well as professional indemnity cover of £500,000. He confirmed that he had not previously been appointed as a manager by the Tribunal. Nonetheless, he confirmed a willingness to act if appointed, and in his own name if that was required, after the Tribunal had confirmed its view that any Tribunal appointed manager should almost certainly be an individual. He confirmed that he was a qualified Chartered Accountant but did not practice as such. When questioned about Rowan's fees he confirmed that VAT had not been added because the company's turnover had not yet exceeded the £85,000 threshold. It was anticipated that VAT would have to be added by February or March next year. He explained that there was a separate trading company which had traded up to, but not beyond, the VAT threshold. When asked how he would deal with

being appointed against the wishes of an overwhelming number of the apartment owners he said that he would base his decisions on facts and try to move beyond politics. He saw communication as a key issue, with face-to-face meetings, and agreed that a lot of work would be required at the beginning, that time would be needed, and that whilst there might be some initial "pushback" his hope would be that when the apartment owners saw things being done they would be convinced of the common purpose. He confirmed that he lived in the South Lakes and spent approximately three days a week in Lancashire. He confirmed that he had visited the property twice with Mr Riding, initially very shortly after his removal as a director. When questioned by Mr Evans as to his assessment of the level of repair of the property he said that he had not found it to be in disrepair but that there would need to be a proper assessment as to whether it is in good and substantial repair. His initial priority would be to deal with any outstanding health and safety issues. He welcomed a challenge.

32. Mr Evans in his concluding comments stated that one can always find a breach, old buildings will always need repairs, and that the Applicants were very quick at retaliating. He said that Fords in the past six months had helped to make substantial progress. He pointed out that Rowan was a new company which had not yet reached the VAT threshold and that Mr Brook had not felt able to say that the property was in "a state of disrepair". Mr Evans stressed that 81% of the apartment owners, most of whom live at Singleton Hall, support and want Fords to continue, and to go against their wishes would be against the overriding objective being to deal with the case fairly and justly.

33. Mr Alderson, after a short adjournment to consult Mr Riding, made three specific points on his behalf, two of which were to dispute matters referred to by Mr Ford and the third related to his leaking windows, reported 13 months ago, not being properly addressed and simply painted over. Mr Alderson referred to various matters that have been previously detailed, reiterating in his concluding comments that there had been serious management breaches and that intervention was necessary because of sloppy and shambolic governance, and incompetence, both by the directors and Fords.

The relevant Statutory Provisions

34. The following legislative provisions are pertinent to the Tribunal's decision.

Section 24 of the 1987 Act

(1) The appropriate tribunal may, on an application, for an order under this section,..... 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 -

that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

.....

(iii) that it is just and convenient to make the order in all the circumstances of the case;

.....

(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.

.....

(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.....

.....

(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;..

(9A) the tribunal shall not vary or discharge an order under subsection (9) on

(a) the application of any relevant person unless it is satisfied –

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

....

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

Section 20C of the 1985 Act

(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 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.

.....

(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.

Rule 13 of the Procedure Rules

(1) The Tribunal may make an order in respect of costs only –

...

(b) if a person has acted unreasonably in bringing defending or conducting proceedings in –

....

(ii) a residential property case, or

(iii) a leasehold case;...

The Tribunal's Reasons and Conclusions

35. The Tribunal has determined the position on the basis of all of the evidence before it.

36. What was immediately evident is that relations between different apartment owners have been more than strained and that personal differences have had a direct and adverse impact on the effective and efficient management of Singleton Hall.

37. The Applicants referred to "repeated disagreements between leaseholders and directors, making the property impossible to manage. This accounts for SHMC's repeated difficulties in recruiting and retaining competent managing agents". The Respondents have stated that "the remaining directors felt that the Applicants and Mr Worth were aggressive and obstructive, unwilling to see anything but their own viewpoints and where the remaining directors dissented, they could expect to receive abuse/harassment".

38. Wherever the blame lies, it is sad, and may well have had an adverse effect on the value and saleability of all the apartments.

39. The Tribunal reminded itself of the following considerations and principles before attempting to make its decision: –

- The right to apply for the appointment of the manager is a fault-based right exerciseable where statutory fault-based grounds are made out and it is "just and convenient" to appoint a manager.
- Before an application is made a preliminary notice under Section 22 must be served. No application may be made unless the notice has been served (unless service is dispensed with by the Tribunal) and a reasonable period for the remediation of a remediable breach has expired.
- There is no requirement that a breach under any of the Section 24(2) grounds has to be material. The need to establish a breach is in effect a threshold criterion. Nevertheless, an immaterial breach on its own is unlikely to lead to a finding of an appointment being "just and convenient".
- Even if a fault-based ground is made out, the Tribunal has a discretion whether to make the appointment.
- Whilst inevitably there will be a need to analyse what has gone before, in order to establish whether the Tribunal has jurisdiction, i.e. whether one of the necessary fault-based thresholds set out in Section 24(2) has been met, any appointment deals only with the future and the position going forward.
- It follows that when considering whether it is "just and convenient" the Tribunal will be most concerned with future management, and
- It will be extremely interested in the identity, qualifications, experience, and suitability of the proposed manager, and any existing manager.
- A manager is a Tribunal appointed official and carries out his functions in his own right and in a capacity independent of the landlord as confirmed by the Court of Appeal in *Maunder Taylor v Blaquiere [2002] EWCA 1633*.
- It is implicit in the status of a manager as an appointee and officer of the Tribunal that he or she should be an individual. The 1987 Act does not state the manager must be an individual, but it is of note that the leading text of *Service Charges and Management (Fourth edition)* written by the barristers in the Tanfield Chambers states at paragraph 23.37 that "Tribunal decisions where a firm or company has been appointed are probably wrong".

40. The Tribunal then considered whether there was a need to inspect Singleton Hall. The covid-19 epidemic at made an inspection impracticable and inadvisable for many months. Whilst now possible, the Tribunal concluded that it was not necessary. Having had careful regard to the parties' extensive written and oral submissions and the testimony given at the Hearing, it was content it had sufficient evidence to be able to make the necessary findings of fact.

41. The Tribunal next considered whether any of the threshold grounds for making an order as specified in Section 24(2) have been made out.

42. Section 24(2)(a)(i) makes it clear that a Tribunal may only make an order if it is satisfied that the relevant person *is,* not *was,* in breach of an obligation relating to management. In other words, it is a necessary precondition that a breach relating to a management obligation must be still subsisting.

43. As Mr Alderson correctly pointed out at the Hearing a code of practice breach as referred to in Section24(2)(ac)(i) can be sufficient even if historic, because the wording of that subsection refers to the Tribunal needing to be satisfied that a relevant person *has* failed to comply with a relevant code provision.

44. The Applicants' written submissions alleged code breaches by Homestead, Hive and Fords. However, the Tribunal did not see it as particularly relevant to dwell on the alleged breaches by Homestead and Hive, both being managing agents who are no longer in office and whose tenure was short lived. It did nonetheless have sympathy with their unenviable task.

45. Nor did the Tribunal agree with the Applicants' assertion that as many as 20 out of the 23 alleged management obligation breaches were still now extant or sufficient to satisfy the threshold condition. It was not satisfied that all of the alleged breaches should properly, on an objective assessment, be now regarded as a breach of SHMC's repairing covenant to keep the property in good and substantial repair.

46. As confirmed in the case of *Blue Manchester Ltd v North West Ground Rents Ltd [2019] EWHC 142 (TCC)* the phrase "good and substantial repair" does not require premises to be in perfect repair or pristine condition, and the age, character and locality of the premises as well as the state of repair when the leases were granted must be taken into account when considering if a lease covenant has been breached. The Tribunal was also minded that clauses 6.3 and 6.4 of the Lease when referring to (inter alia) decoration and grounds maintenance have included provisions which make SHMC the initial arbiter of the requisite standards. Clause 6.3 having confirmed the duty to decorate "as often as reasonably necessary" concludes with the words "to a standard which the Management Company may consider from time to time to be adequate", although it is arguable that proviso may only apply to the separate obligation to clean, heat and light communal parts. Clause 6.4 refers to SHMC having to "keep in good order….as the Management Company may think fit the grounds of the estate".

47. Nevertheless, as was confirmed at the outset of the Hearing, it was not necessary to find that all of the alleged breaches were made out in order for the Tribunal to have the necessary jurisdiction to make an order. The Tribunal confirmed that if one of the gateway grounds could be made out its focus would then be on whether it is "just and convenient" to make an order.

48. The Tribunal found, from all of the evidence, that some (but not all) of the breaches identified by the Applicants had not been fully resolved, including most importantly those relating to safety in the event of a fire, and concluded therefore that the jurisdictional threshold test had been satisfied, allowing it to concentrate on whether it would be "just and convenient" to appoint a new manager to manage Singleton Hall.

49. A battered edition of Chambers Dictionary defines "just" as fair: impartial: according to justice, and "convenient" as suitable: handy: commodious.

50. Each of the parties had provided very extensive written representations. Many related to the history of the development, and the factual background which whilst providing context, were not necessarily always pertinent to the decision to be made by the Tribunal as to whether Fords as appointed by SHMC approximately 6 months ago should now be ousted as the manager of the development.

51. The Applicants nominee was Rowan. No draft order setting out the specific proposed terms of its appointment was submitted to the Tribunal.

52. The Tribunal found Mr Brook focused and personable, and clearly trying to grow his relatively new and expanding business on the basis of gaining a good reputation. It was impressed that he felt that he could over time by improved communication win over the overwhelming majority of apartment owners that oppose his appointment. The Tribunal would hope that if he had been appointed and allowed sufficient time, he could have proved himself to be suitable and successful. However, there was no certainty that this would be the case.

53. The Tribunal shared a number of Mr Alderson's concerns relating to Fords written management agreement, but ironically some of the concerns that he raised as to its company accounts could equally be made against Rowan, which had only been incorporated in January 2019 and which Mr Brook confirmed has not yet posted accounts with an annual turnover of over £85,000.

54. Nevertheless, Mr Ford impressed the Tribunal with his robust defence of his and his company's alleged failings, some of which he readily admitted and for which he apologised. It was clear that he is a member of the RICS, has a number of years' experience, manages a large portfolio of properties, and has a long-standing knowledge of Singleton Hall together with various ongoing issues as regards the remediation of faulty conversion works. The Tribunal found that he has the advantages over Mr Brook, in respect of what Mr Alderson quite rightly described as a unique and sensitive property, and which is also a complex building, of both knowing it and having the technical expertise of a qualified Chartered Surveyor.

55. Fords is also the choice of the present directors of SHMC and, very significantly, the evidence is that that choice is backed by over 80% of the apartment holders, and after Fords have been in post for some months.

56. The Tribunal noted that this is not a case of a freeholder refusing to engage with the management of a property or refusing to employ managing agents to assist with its proper management. There is clear evidence of the directors aided by Ford actively managing the property, albeit not to the satisfaction of the Applicants. The Tribunal rejects the Applicants' assertion that the Respondents had failed to respond meaningfully to the Section 22 notice.

57. Nor is this a case where the freeholder is independent of the apartment owners. Together, and with equal rights in SHMC they own and can control the freehold. All have a vested interest in the good management of Singleton Hall. If in the future SHMC wants to change its managing agents, a majority of the members have the necessary powers to do so.

58. The Tribunal is not persuaded that any current failings of SHMC are so serious to make it just and convenient to disenfranchise SHMC's present directors and 81% of the apartment owners by imposing instead the choice of but 2 out of 21 of the apartment owners, (1 of whom has now agreed to sell his apartment, albeit subject to contract). The Tribunal is even less persuaded by the notion that past failings of SHMC, when Mr Riding and Mr Carter were directors, should justify such an outcome.

59. It is in the nature of any form of shared ownership, particularly where there are over 20 households involved, that it is not possible to please everyone all of the time or to have unanimity on all decisions. Nevertheless, it was clear to the Tribunal that many of the past difficulties at Singleton Hall stemmed from personal animosities which were unlikely to be resolved by the appointment of a new manager.

60. Even if the Tribunal had found Mr Brook to be a manifestly better candidate than Mr Ford, which, it must emphasise, it did not, it would have hesitated to impose Mr Brook's appointment against the will of such a clear majority of apartment owners and on the basis that such a decision would inevitably have been divisive and in itself make good estate management, which in part relies on good will and participation, more difficult.

61. The Tribunal in all the circumstances of the case, and for the reasons stated, concluded that it would not be "just and convenient" to order a new manager to be appointed, and decided that the Application should be dismissed.

It turned next to the request for an order under Section 20C of the 1985 Act.

62. The Tribunal having regard to its decision not to order the appointment of a new manager, and as to what is just and equitable in all the circumstances, determined that an order under Section 20C should not be made. That is, that SHMC should not be precluded from including within future service charges demands to the leaseholders the costs of the present proceedings before the Tribunal.

63. However, this decision should not be taken as an indication that the Tribunal considers that any such service charge costs will be reasonable or indeed payable. All the leaseholders will retain the right to make a separate application to the Tribunal under Section 27A of the 1985 Act to review such matters, at a later date, should they then feel it appropriate.

Inter party costs

64. The Tribunal has a further jurisdiction as to costs under Rule 13 of The Tribunal Procedure (First-tier Tribunal Property Chamber) Rules 2013 ("the Procedure Rules") which provides that a Tribunal may determine that one party to the proceedings pays costs incurred by the other party in the limited circumstances set out in that rule, if that party has acted unreasonably in bringing, defending, or conducting those proceedings.

65. After making their closing submissions in respect of the two substantive Applications Mr Alderson and Mr Evans were each asked if they wished to make further or specific representations as to the question of inter party costs. Neither wanted to, and both appeared to reserve their positions as to the possibility of a future application.

66. Rule 13(3) makes it clear that an order can be made in response to an application, or by the Tribunal on its own initiative.

67. The Tribunal has decided that in the circumstances of the case it would be helpful to the parties to determine the matter forthwith.

68. In so doing the Tribunal has had regard to the general and very useful guidance on the jurisdiction conferred by Rule 13(1)(b) as set out in the Upper Tribunal decision of *Willow Court Management Company (1985) Limited v Alexander 2016 UKUT 0290 (LC)* and as to how the discretionary power afforded under Rule 13 should be exercised.

69. *Willow Court* confirms that a finding of "unreasonable conduct" is an essential precondition to the exercise of the Tribunal's discretion, and states "only behaviour related to the conduct of the proceedings themselves may be relied on at the first stage of the analysis".

70. The first question for the Tribunal to address therefore is has a party acted unreasonably, i.e., acted without any reasonable explanation for the conduct complained of. Previous authorities such as the Court of Appeal in *Ridehalgh v Horsefield (1994) Ch205* make it clear that "unreasonable" conduct includes "conduct which is vexatious, and designed to harass the other side rather than the advance the resolution of the case..... but conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result."

71. Mr Evans had urged that the timing of the Section 22 notice, the necessary precursor to these proceedings coming but 31 days after Mr Riding and Mr Carter's removal as directors of SHMC must be seen as an act of retaliation, and by implication vexatious. Mr Alderson denied that assertion, stressing that they had not sought to overturn their dismissal as directors, and stating that the Application was motivated by their long-standing misgivings as to the standards of managing the property. The Tribunal can only surmise as to Mr Riding and Mr Carter's motivations for initiating and continuing the proceedings but wonders if both factors have played their part.

72. Mr Alderson had questioned the extent of Mr Evans' instructions at various points in the proceedings. The Tribunal accepted the evidence provided by Mr Evans in his statement of truth.

73. The Tribunal did regard some of the actions by the parties as unnecessary and overzealous and had considerable sympathy with the position faced by successive managing agents, but the Tribunal reminded itself that it is only the conduct within the proceedings which can be the subject of an order under Rule 13.

74. The Tribunal found that each of the parties' representatives had throughout made their points politely, albeit robustly, and certainly conducted themselves in an orderly manner during the hearing.

75. The threshold as to what is "unreasonable conduct" in this particular context is a high one, but notwithstanding that the Tribunal ultimately decided that the Application should fail, it did not find that either party had crossed it.

76. The Tribunal has decided therefore that it would not be appropriate to make a costs order under Rule 13 of the Procedure Rules.

Tribunal Judge J Going
17 October 2021