



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

<b>Case reference</b>	<b>:</b>	<b>LON/00AN/LVM/2022/0021</b>
<b>Property</b>	<b>:</b>	<b>46, Auriol Road, London, W14 0SR</b>
<b>Applicants</b>	<b>:</b>	<b>Helene Sandberg Ahmed El-Sadek and Deana El-Sadek Represented by GSC Solicitors LLP</b>
<b>Respondents</b>	<b>:</b>	<b>Auriol Management Limited (1) and Daniela Becher (2)</b>
<b>Type of application</b>	<b>:</b>	<b>Variation of order for appointment of a manager</b>
<b>Tribunal members</b>	<b>:</b>	<b>Judge Dutton Mr D Jagger MRICS</b>
<b>Date and venue of hearing</b>	<b>:</b>	<b>2 March 2023 at 10 Alfred Place, London WC1E 7LR</b>
<b>Date of this Decision</b>	<b>:</b>	<b>9 March 2023</b>

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**DECISION**

*The Tribunal varies the Management Order in the terms annexed.*

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**REASONS**

**The Issues:**

1. The Tribunal received an application dated 17 October 2022 seeking a determination from the Tribunal for a variation of an order appointing a manager under section 24(9) of the Landlord and Tenant Act 1987.
2. The variation sought is that the current Tribunal appointed manager, Mr Martin Kingsley, should have his period of appointment extended by five years from the expiry date of 31 March 2023.

## **Background**

3. The original Tribunal appointment was made in January 2017 and amended to appoint Mr Kingsley on 12 March 2020 for a term expiring on 31 March 2023. The details concerning this appointment are fully set out in the decision dated 12 March 2022 in case number LON/00AN/LVM/2019/0018. We do not consider it necessary to go into any detail concerning Mr Kingsley's initial appointment as it is set out cogently and clearly in the above decision.
4. Unfortunately, it would appear that the animosity between the leaseholders has not improved. In addition, Ms Becher, a long-time resident at the property 46 Auriol Road, London W14 0SR (the Property), has become disenchanted with the management of Mr Kingsley and objects to his continued appointment, although offers no alternative.
5. The two applicants and Ms Becher the second Respondent own the four apartments in the building, Ms Becher owning the top two apartments, one of which is rented out, so we were told, as a licensed HMO. The first Respondent, Auriol Management Limited, owns the freehold interest. This is a leaseholder owned company with one share per flat. The two applicants and Ms Becher are directors of the company and Ms Rawicz, a friend and lawyer for Ms Becher, is a director in respect of the second floor flat. Ms Beecher is the company secretary.

## **The Law**

6. This application is under section 24 of the Landlord and Tenant Act 1987 and the relevant parts state:

*“(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 section (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.”*

## **Inspection**

7. Although the directions for this hearing dated 9 November 2022 confirmed an inspection should take place at 10am, enquiries were made of the parties, and all agreed that such an inspection would not be required and hence one did not take place.

## **The Hearing**

8. The hearing was held on 2 March 2023 at 10, Alfred Place, London, WC1E 7LR. In attendance were Mrs Helene Sandberg with Mr Kingsley. Mr Cockburn of Counsel, together with Mr Richardson his instructing solicitor were in attendance

and represented the Applicants. Ms Becher attended with Mr Woodhouse of Counsel.

9. The parties had produced extensive bundles of documents, in excess of 500 pages, as well as skeleton arguments by Counsel, although Ms Becher's Counsel was then Mr Ledermann who could not attend the hearing, Mr Woodhouse attending instead and most ably filling his shoes. The bundles have been considered by us. However, for the reasons we shall come to it is not, in our judgment necessary to go into any details.
10. As the parties did at the start of the hearing in 2020 all those in attendance confirmed that there had been no improvement in their relationships and indeed matters had in fact deteriorated.
11. We first heard from Mrs Sandberg who told us that whilst the management of the Property had been in the hands of Mr Kingsley, she had the most peaceful time. She said that she was spending much time and money in respect of applications to the Tribunal and that she did not interact with Ms Becher. It would seem that Ahmed El-Sadek and Deana El-Sadek rented out their apartment and lived abroad.
12. Mrs Sandberg was followed by Ms Becher. The summary of her evidence is that she did not get on with Mr Kingsley, her relationship with the other two leaseholders had not improved, indeed it had deteriorated. She put forward various issues and questions she had. She confirmed that she had not put forward an alternative, although quite some time had gone by since Mr Kingsley was first appointed.
13. It was agreed that there had been an issue with regard to the reconciliation of the service charges in the years 2017, 2018 and 2019, a time before Mr Kingsley, but this was resolved by a very recent decision in case LON/00AN/LSC/2020/0067 when the figures for these years were finalised. It should be said that Mr Kingsley bears a good deal of responsibility for not resolving this issue and seeking sums from Ms Becher which were found not to be due. In addition, Ms Becher accepted that she was wrong not to have made at least some payments on account of the service charges demanded of her.
14. At the end of the hearing, it was put to Ms Becher whether she would wish to manage the Property. She left us in no doubt that she would not wish to do so. Indeed, on reflection she indicated that Mr Kingsley should remain but that the period of this appointment should not be the five years he sought but instead between one and two years. Mr Kingsley thought he needed the five year appointment although three years would be reasonable to avoid unnecessary future costs and provide some stability. It is with this concession on the part of Ms Becher that we do not feel it necessary to repeat the matters raised at the hearing and covered in the papers before us.
15. We do, however, appreciate Ms Becher's history of involvement with the Property but hope that there can be tranquillity at 46 Auriol Road going forward.

16. We have produced a varied management order which complies with the directions of the President of the First-tier Property Chamber issued in December 2021, with some amendments to reflect the issues before us.

**Discussion and Decision:**

17. We should clarify some issues that were raised by Mr Lederman on behalf of Ms Becher in respect of the draft management order.

18. The first issue was the length of term. Ms Becher thought 1 to 2 years. Mr Kingsley thought 5 years was required. The previous appointment have been for three year periods and we see no need to depart from that time scale. It should give time to deal with matters. There are little in the way of services and the building should, in truth, be easy to manage.

19. There was concern on the part of Ms Becher about access on 24 hour notice. We agree that this should be varied to 48 hours, save in the case of emergency. It is not a right we would expect the Manager to use on a frequent basis.

20. As to contracts there was discussion in respect of the door entry phone system, which is somewhat dated but essentially supplied and paid for by Ms Becher. This can remain, but if a new system becomes necessary, and that will be a judgment call for Mr Kingsley, the installation and upkeep of same will fall as a service charge.

21. The front lock to the Property has been replaced by Mr El-Sadek as a result of his tenant losing keys. Ms Becher told us that she had 5 keys and would like that number supplied to her. We were told that Mr El-Sadek had agreed to pay for the new lock and the provisions of keys and we hope therefore this will not be an issue.

22. On the point of contracts, it was agreed that Mr Kingsley would retain the services of cleaners for the entry hall way once a month, which will be a service charge, but that Ms Becher could remain responsible for cleaning the stairs that led to her apartments at her expense.

23. The question of attending to licences to assign, approvals and pre-contract enquiries was challenged by Mr Lederman, but we are of the view that if the difficulties remain between the leaseholders, who will deal with these matters but Mr Kingsley and therefore the provisions at paragraph 18 will remain. We do not think there is any problem with paragraph 20, when read appropriately.

24. There were queries concerning remuneration which we have addressed in the management order. We consider that the fee chargeable by Mr Kingsley under 23(iii) should be based on an hourly rate not a percentage. In our experience it will be the supervising surveyor who will charge a percentage fee for that task, and it would seem unlikely that Mr Kingsley would have the capacity or need to

fill that role. We have also reduced the standard charges at 23 (ix) and (x) as we think them too high for a single letter.

25. We consider that the on account payments at paragraph 25 (i) to be too high and we have reduced those as shown to include an annual contribution to the reserve fund of £250 for each flat. The interest claimed is high and we consider 8% in line with the Court rate is sufficient. No mention appears to be made concerning Ground Rent which is currently collected by the manager and should remain. the remainder of the draft management order did not seem to be challenged and is annexed hereto.

**Name:** Judge Dutton

**Date:** 9 March 2023

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## **VARIED MANAGEMENT ORDER**

UPON the Applicant having applied for the variation of the management order dated 27 January 2017 for the appointment of a manager under Part II of the Landlord and Tenant Act 1987 as varied by the order dated 12 March 2020 (“**the Management Order**”)

AND UPON Mr Kingsley’s appointment as manager having been continued until the determination of the application to vary the Management Order by the directions order dated 9 November 2022

AND UPON the President of the First-tier Tribunal Property Chamber having issued a Practice Statement in December 2021 annexing a draft management order that is to be used as the basis for a management order in successful applications under Part II of the Landlord and Tenant Act 1987

AND UPON the First-Tier Tribunal being satisfied that the variations to the Management Order made by this order will not result in a recurrence of the circumstances which led to the Management Order being made, and that it is just and convenient in all the circumstances of the case to vary or discharge the order.

IT IS ORDERED THAT

1. The Management Order be varied to take the form of order annexed to this order.
2. The form of management order as varied by this order shall be in continuation of the Management Order, and all variations to the Management Order shall take effect from the date of this order.

Dated 9 March 2023

**ANNEXE TO ORDER DATED 9 MARCH 2023**

**MANAGEMENT ORDER AS VARIED BY ORDER DATED 9 MARCH 2023**

**Interpretation**

In this order

(a) "Common Parts" means any garden area, postal boxes, refuse store, security gates, paths, halls, staircases and other access ways and areas (if any) within the Property that are provided by the Landlord for common use by the Lessees or persons expressly or by implication authorised by them

(b) "Landlord" means the person or persons with the benefit of the freehold title registered at HM Land Registry under Title Number LN179684 or their successors in title to the reversion immediately expectant upon the Leases

(c) "Functions" means any functions in connection with the management of the Premises including any obligations and powers of the Landlord under the Leases

(d) "Leases" means the long leases vested in the Lessees and as varied by various Deeds of Variation.

(e) "Lessee" means a tenant of a dwelling holding under a long lease as defined by section 59(3) of the Landlord & Tenant Act 1987 ("the Act")

(f) "the Manager" means Martin Kingsley MIRPM AssocRICS of K & M Property Management Limited, The Studio, 63 Darlands Drive, Barnet, Hertfordshire, EN5 2DE.

(g) "the Property" means all that property known as 46 Auriol Road, London W14 0SR

(h) "the Order" means this Management Order

(i) "the Tribunal" means the First-tier Tribunal (Property Chamber)

**Preamble**

UPON the Tribunal having appointed Andrew McKeer as the manager of the Property by an order under Part II of the Landlord and Tenant Act 1987 dated 27 January 2017

AND UPON the Tribunal having varied that order by a further order dated 12 March 2020 to replace Mr McKeer with the Manager as the manager of the Property

AND UPON Helene Sandberg and Ahmed and Deana El-Sadek, both Lessees of flats at the Property, having applied for a variation of the management order under section 24(9) of the Landlord and Tenant Act 1987

AND UPON the Tribunal being satisfied that the variations to the management order embodied in this Order will not result in a recurrence of the circumstances which led to the original management order being made, and that it is just and convenient in all the circumstances of the case to vary or discharge the order.

IT IS ORDERED THAT

The Manager

1. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (“the Act”) Martin Kingsley of K & M Property Management Limited is appointed as Manager of the Property.
2. The Manager’s appointment shall start on 9 March 2023 (“the start date”) and shall end on 31 March 2026 (“the end date”).
3. For the avoidance of doubt this Order supplements but does not displace covenants under the Leases and the Tenants remain bound by them. Where there is a conflict between the provisions of the Order and the Leases, the provisions of the Order take precedence.
4. The purpose of this Order is to provide for the management of the Property in circumstances where Lessees, being the directors of the Landlord, cannot reach agreement as to the management of the Property.
5. The Manager is given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of the Landlord as set out in the following terms of this Order and the Directions set out below, including:
  - (a) The power and duty to carry out the obligations of the Landlord contained in the Leases and in particular and without prejudice to the foregoing:
    - (i) The Landlord’s obligations to provide services;
    - (ii) The Landlord’s repair and maintenance obligations; and
    - (iii) The Landlord’s power to grant consent.
  - (b) The power to delegate to other employees of K & M Property Management Limited, appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions.
  - (c) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.



- (d) The power to open and operate client bank accounts in relation to the management of the Property and to invest monies pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to s42 of the Landlord and Tenant Act 1987. The Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the Leases (if any) or to powers given to him by this Order) and all other monies received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund.
  - (e) In relation to the period between 1st April 2020 and 1st March 2023, all such powers enjoyed by the Manager under the order dated 12th March 2020.
6. The Manager shall manage the Property in accordance with:
- (a) the terms of this Order and the Directions set out below;
  - (b) the respective obligations of the Landlord and the Tenants under the Leases whereby the Property is demised by the Landlord (save where modified by this Order);
  - (c) the duties of a Manager set out in the Service Charge Residential Management Code (“the Code”) (3rd Edition) or such other replacement code published by the Royal Institution of Chartered Surveyors (“RICS”) and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993; and
  - (d) the provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.
7. From the date this Order comes into effect, no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.
8. From the date of this Order, the Landlord shall not, whether by itself or any agent, servant or employee, demand any further payments of service charges, administration charges or any other monies from the Lessees. Such functions are transferred to the Manager forthwith.
9. The Lessees and any agents or servants thereof shall give reasonable assistance and cooperation to the Manager in pursuance of his duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of his said duties and powers.
10. The Lessees shall - on receipt of 48 hours written notice save in the case of emergencies - give the Manager reasonable access to any part of the Property which he might require in order to perform his functions under this Order.
11. The obligations contained in this Order shall bind any successor in title in the current leaseholders and freeholders and the existence and terms of this Order

must be disclosed to any person seeking to acquire either a leasehold interest (whether by assignment or fresh grant) or freehold.

12. The Tribunal requires the Manager to act fairly and impartially in the performance of their functions under this Order and with the skill, care and diligence to be reasonably expected of a Manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions.
13. The Manager or any other interested person may apply to vary or discharge this Order pursuant to the provisions of section 24(9) of the Act.
14. Any application to extend or renew this Order must be made before the end date, preferably at least three months before that date, and supported by a brief report of the management of the Property during the period of the appointment. Where an application for an extension or renewal is made prior to the end date, then the Manager's appointment will continue until that application has been finally determined.
15. The Manager is appointed to take all decisions about the management of the Property necessary to achieve the purposes of this Order. If the Manager is unable to decide what course to take, the Manager may apply to the Tribunal for further directions, in accordance with section 24(4), Landlord and Tenant Act 1987. Circumstances in which a request for such directions may be appropriate include, but are not limited to:
  - (a) a serious or persistent failure by any party to comply with an obligation imposed by this Order;
  - (b) circumstances where there are insufficient sums held by the Manager to discharge their obligations under this Order and/or for the parties to pay the Manager's remuneration; and
  - (c) where the Manager is in doubt as to the proper construction and meaning of this Order.

### Contracts

16. Rights and liabilities arising under contracts, including any contract of insurance and/or any contract for the provision of any services to the Property, to which the Manager is not a party, but which are relevant to the management of the Property, shall upon the date of appointment become rights and liabilities of the Manager, save that:
  - (1) the Manager has the right to decide, in their absolute discretion, the contracts in respect of which they will assume such rights and liabilities, with such decision to be communicated in writing to the relevant parties within 56 days from the date this order.
  - (2) The Manager shall receive and retain in a separate account the ground rents payable under the respect leases to be held on trust for the first respondent and released to the first respondent upon written confirmation of all four directors/shareholders. He shall be entitled to

demand the payments in accordance with the leases and to give a ground rent receipt if requested.

17. The Manager may place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property.

#### Licences to assign, approvals and pre-contract enquiries.

18. The Manager shall be responsible for carrying out those functions in the Leases concerning approvals and permissions, including those for sublettings, assignments, alterations and improvements, that the Leases provide should be carried out by the Landlord.
19. The Manager shall be responsible for responding to pre-contract enquiries regarding the sale of a residential flat at the Property.
20. Any leaseholder who lets their apartment on a short-term letting shall provide to the Manager the name and contact number of the tenants so that he may contact them if necessary.

#### Legal Proceedings

21. The Manager may bring or defend any court or tribunal proceedings relating to management of the Property (whether contractual or tortious) and, subject to the approval of the Tribunal, may continue to bring or defend proceedings relating to the appointment, after the end of their appointment.
22. Such entitlement includes bringing proceedings in respect of arrears of service charge and rent attributable to any of the flats in the Property, including, where appropriate, proceedings before this tribunal under section 27A of the Landlord and Tenant Act 1985 and in respect of administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002 or under section 168(4) of that Act or before the courts including legal action to prevent a further breach of covenant. and shall further include any appeal against any decision made in any such proceedings.
23. The Manager may instruct solicitors, counsel, and other professionals in seeking to bring or defend legal proceedings and is entitled to be reimbursed from the service charge account in respect of costs, disbursements or VAT reasonably incurred in doing so during, or after, this appointment. If costs paid from the service charge are subsequently recovered from another party, those costs must be refunded to the service charge account.

#### Remuneration

24. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges or administration charges of Leases of the Property as follows:

- (i) a basic fee of £1,000 per flat per annum. Those services to include the services set out in the paragraph 3.4 of Service Charge Residential Management Code published by the RICS save to the extent that this paragraph makes separate provision.
  - (ii) The sum of £250 for each consultation notice under section 20 of the Landlord and Tenant Act 1985, as amended.
  - (iii) A charge at the agreed hourly rate in relation to the arrangement and overall responsibility and supervision of major works if not dealt with my others.
  - (iv) The recovery of outstanding service charges shall give rise to an administration charge payable by the defaulting Lessee of £15 for each letter written after the first.
  - (v) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing Lessee.
  - (vi) An additional charge in relation to brokering insurance claims or valuations based on £200 per claim.
  - (vii) A charge of £200 per hour for further tasks which fall outside the agreed duties.
  - (viii) To be reimbursed in respect of reasonable costs, disbursements and expenses (including, for the avoidance of doubt, the fees of Counsel, solicitors and expert witnesses) of and incidental to any application or proceedings whether in the Court or the First-tier tribunal, to enforce the terms of the Leases. For the avoidance of doubt, the Manager is directed to use reasonable efforts to recover any such costs, disbursements and expenses directly from the party concerned in the first instance and will only be entitled to recover the same as part of the service charges in default of recovery thereof.
  - (ix) The Manager shall respond to any written query raised by a Lessee and shall provide a reply either verbally or in writing. If the response is verbal, then the Lessee may request a response in writing. Any further query on the same issue raised by that Lessee will require the prior payment of £100.00 per letter before the Manager deals with the query.
  - (x) Should any Lessee or their representative wish to continue dialogue then they will be required to pay in advance a professional fee to the Manager of £100 per letter.
  - (xi) VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- Ground Rent and Service Charge

25. The Manager shall collect the ground rents payable under the Leases and properly account those sums to the Landlord.

26. Whether or not the terms of any Lease so provides, the Manager shall have the authority to:

- (i) Demand the following payments in advance, prior to such costs being incurred in the relevant service charge year:
  - (a) £3,250 per flat in the service charge year 2023/2024

(b) £ 3,250 per flat in the service charge year 2024/2025  
(c) £ 3,250 per flat in the service charge year 2025/2026  
and balancing payments at the end of the accounting year.

- (ii) Establish and maintain a sinking fund to meet the Landlord's obligations under the Leases and to set aside from the sums referred to in 25(i) above £250 in each year for each flat;
  - (iii) Allocate credits of service charge due (after accounting for costs incurred and any contribution to the sinking fund) at the end of the accounting year to each flat by way of repayment or credit against future payments due;
  - (iv) Treat the service charge financial year as commencing on the 1 April 2020 and ending on 31 March 2021 and thereafter as running from 1 April to 31 March in each year this Order is in place.
  - (v) Set, demand and collect service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
  - (vi) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.
  - (vii) Demand from a Lessee payment of interest on any sum payable by that Lessee and not paid by them within 7 days of a valid demand, at a rate of 8% per annum from the 8th day after a valid demand for such payable sum has been demanded.
27. The Manager is entitled to recover through the service charge the reasonable cost and fees of any surveyors, architects, solicitors, counsel, and other professional persons or firms, incurred by them whilst carrying out their functions under the Order, including for the avoidance of doubt their functions under the order dated 12 March 2020.
28. All monies received by the Manager in respect of the Property shall be held in a designated trust account.

#### Administration Charges

29. The Manager may recover administration charges from individual Lessees for their costs incurred in collecting ground rent, service charges and insurance which includes the costs of reminder letters, transfer of files to solicitors and letters before action. Such charges will be subject to legal requirements as set out in schedule 11 of the Commonhold and Leasehold Reform Act 2002. The details of the fees charged are set out at paragraph 23 of this Order.
30. The Manager may recover administration charges from individual Lessees for their legal costs incurred in bringing or defending proceedings in the Tribunal in relation to that Lessees' lease. Such charges will be subject to legal requirements as set out in schedule 11 of the Commonhold and Leasehold Reform Act 2002.

#### Disputes

31. In the event of a dispute regarding the payability of any sum payable under this Order by the Lessees, additional to those under the Leases (including as to the remuneration payable to the Manager and litigation costs incurred by the Manager), a Lessee, or the Manager, may apply to the Tribunal seeking a determination under section 27A of the Landlord and Tenant Act 1985 as to whether the sum in dispute is payable and, if so, in what amount.
32. In the event of a dispute regarding the payability of any sum payable under this Order by the Landlord, other than a payment under a Lease, the Manager or the Landlord may apply to the Tribunal seeking a determination as to whether the sum in dispute is payable and, if so, in what amount.
33. In the event of dispute regarding the conduct of the management of the Property by the Manager, any person interested may apply to the Tribunal to vary or discharge the order in accordance with section 24(9) of the Landlord and Tenant Act 1987.

In the event of a dispute regarding the reimbursement of unexpended monies at the end of the Manager's appointment, the Manager, a Lessee, or the Tribunal may apply to the Tribunal for a determination as to what monies, if any, are payable, to whom, and in what amount.

#### **DIRECTIONS TO LANDLORD**

34. The Landlord must comply with the terms of this Order.
35. On any disposition other than a charge of the Landlord's estate in the Property, the Landlord will procure from the person to whom the Property is to be conveyed, a direct covenant with the Manager, that the said person will (a) comply with the terms of this Order; and (b) on any future disposition (other than a charge) procure a direct covenant in the same terms from the person to whom the Property is to be conveyed.
36. The Landlord shall give all reasonable assistance and co-operation to the Manager in pursuance of their functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of the Manager's said rights, duties or powers except by due process of law.
37. The Landlord is to allow the Manager and their employees and agents access to all parts of the Property and must provide keys, passwords, and any other documents or information necessary for the practical management of the Property in order that the Manager might conveniently perform their functions and duties, and exercise their powers under this Order.

#### **DIRECTION TO CHIEF LAND REGISTRAR**

38. To protect the direction in paragraph 35 for procurement by the Landlord, of a direct covenant with the Manager, the Registrar is ordered to enter the following restriction in the register of the Landlord's estate under title no LN179684. The restriction is to have overriding priority against any search

with priority or pending application for a disposition of the registered estate (other than a charge) that has been lodged after the 27 January 2017.

*“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without a certificate signed by the applicant for registration or their conveyancer that the provisions of paragraph 34 of an Order of the Tribunal dated 9 March 2023 have been complied with”*

### **DIRECTIONS TO MANAGER**

39. The Manager must adhere to the terms of the Order above.

#### Registration

40. The Manager must make an application to HM Land Registry for entry of the restriction referred to in paragraph 38, within 14 days of the date of this Order.

#### Conflicts of Interest

41. The Manager must be astute to avoid any Conflict of Interest between their duties and obligations under this Order, and their contractual dealings. Where in doubt, the Manager should apply to the Tribunal for directions.

#### Complaints

42. The Manager must operate a complaints procedure in accordance with, or substantially similar to, the requirements of the Royal Institution of Chartered Surveyors.

#### Insurance

43. The Manager must maintain appropriate building insurance for the Property in accordance with the terms of the Leases and to ensure that a revaluation of the Property for insurance purposes is carried out as provided by the Leases and ensure that the Manager's interest is noted on the insurance policy.

44. The Manager must manage or provide for the management through a broker of any claims brought under the insurance policy taken out in respect of the Property with the insurer.

45. From the date of appointment, and throughout the appointment, the Manager must ensure that he has appropriate professional indemnity insurance cover in the sum of at least £2 million and shall provide copies of the certificate of liability insurance to the Tribunal, and, upon request, to any Lessee or the Landlord. The Certificate should specifically state that it applies to the duties of a Tribunal appointed Manager.

#### Accounts

46. The Manager must:

- (a) prepare and submit to the Landlord and the Tenants an annual statement of account detailing all monies receivable, received and expended. The accounts are to be certified by the external auditor, if required under the Leases;
- (b) maintain efficient records and books of account and to produce for these for inspection, to include receipts or other evidence of expenditure, upon request by the Landlord or a Tenant under section 22 Landlord and Tenant Act 1985;
- (c) maintain on trust in an interest-bearing account at such bank or building society, as the Manager shall from time to time decide, into which ground rent, service charge contributions, Insurance Rent, and all other monies arising under the Leases shall be paid; and
- (d) hold all monies collected in accordance with the provisions of the Code.

### Repairs and Maintenance

47. The Manager must:

- (a) by 1 May 2023 draw up a planned maintenance programme for the period of the appointment, allowing for the periodic re-decoration and repair of the exterior and interior common parts of the Property, as well as any roads, accessways, mechanical, electrical and other installations serving the Property, and shall send a copy to every Tenant and to the Landlord;
- (b) subject to receiving sufficient prior funds:
  - (i) carry out all required repair and maintenance required at the Property, in accordance with the Landlord's covenants in the Leases, including instructing contractors to attend and rectify problems, and is entitled to recover the cost of doing so as service charge payable under the Leases or in accordance with the Order.
  - (ii) arrange and supervise any required major works to the Property, including preparing a specification of works and obtaining competitive tenders.
- (c) liaise with all relevant statutory bodies in the carrying out of their management functions under the Order; and
- (d) ensure that the Landlord, and the Tenants, are consulted on any planned and major works to the Property and to give proper regard to their views.

48. The Manager has the power to incur expenditure in respect of health and safety equipment reasonably required to comply with regulatory and statutory requirements.

### Reporting

49. By no later than twelve months from the start date (and then annually) the Manager must prepare and submit a brief written report to the Lessees, and



the Landlord, on the progress of the management of the Property up to that date, providing a copy to the Tribunal at the same time.

### End of Appointment

50. No later than 56 days before the end date, the Manager must:

- (a) apply to the tribunal for directions as to the disposal of any unexpended monies;
- (b) include with that application a brief written report on the progress and outcome of the management of the Property up to that date (a “Final Report”); and
- (c) seek a direction from the tribunal as to the mechanism for determining any unresolved disputes arising from the Manager’s term of appointment (whether through court or tribunal proceedings or otherwise).

51. Unless the Tribunal directs otherwise the Manager must within two months of the end date:

- (a) prepare final closing accounts and send copies of the accounts and the Final Report to the Landlord and Lessees, who may raise queries on them within 14 days; and
- (b) answer any such queries within a further 14 days.

52. The Manager must reimburse any unexpended monies to the paying parties, or, if it be the case, to any new Tribunal appointed Manager within three months of the end date or, in the case of a dispute, as decided by the Tribunal upon an application by any interested party.

Dated 9 March 2023