UPPER TRIBUNAL (LANDS CHAMBER)

UTLC No: LC-2022-22

Royal Courts of Justice, Strand,
London WC2A

3 April 2023

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL
(PROPERTY CHAMBER)

LANDLORD AND TENANT – APPOINTMENT OF MANAGER – application to discharge manager on grounds of partiality – truthfulness of manager's evidence – whether manager to be discharged – s.24(9), Landlord and Tenant Act 1987 – appeal allowed – application redetermined

BETWEEN:

ANTHONY ORCHARD
JACQUELINE ORCHARD

Appellants

-and-

ALISON MOONEY (1)
HELEN ORKIN (2)
SARAH LAMBERT (3)
G. LIMITED (4)

Respondents

Martin Rodger KC, Deputy Chamber President and
Mrs Diane Martin MRICS FAAV

14-15 March 2023

Mr David Warner, instructed directly, for the appellants
Mrs Alison Mooney, the tribunal appointed manager, represented herself
Mr Jonathan Ross, of Forsters LLP, for the second respondent

The following cases are referred to in this decision:

Harcus Sinclair LLP v Your Lawyers Ltd [2021] UKSC 32

Fox v Bannister King & Rigbeys [1988] QB 925

Ladd v Marshall [1954] 1 WLR 1489

Maunder Taylor v Blaquiere [2002] EWCA Civ 1633

Point West GR Ltd v Bassi [2020] EWCA Civ 795

Terluk v Berezovsky [2011] EWCA Civ 1534

United Mining and Finance Corpn Ltd v Becher [1910] 2 KB 296

Introduction

1. The task of a manager appointed by a tribunal under Part 2 of the Landlord and Tenant Act 1987 is a difficult one. The premises which are the subject of the appointment may have been badly managed and serious and long-standing problems may need to be addressed; the necessary funds may not immediately be available, and they may be difficult to collect; leaseholders may have unrealistic expectations about what can be achieved and how long it may take.

2. The manager's task is all the more difficult where the premises are owned by the leaseholders themselves and where the manager's appointment was prompted by their own inability to agree how their building should be managed. Without cooperation from leaseholders the manager may be starved of funds and diverted from the functions they were appointed to carry out. Achievement of the objectives of the management order may become all but impossible. This is such a case.

3. The Tribunal has heard appeals against two decisions of the First-tier Tribunal, Property Chamber (the FTT). Both decisions arose out of an application by the appellants, Mr and Mrs Orchard, to discharge the first respondent, Mrs Alison Mooney MIRPM AssocRICS, from her role as tribunal appointed manager of premises comprising a Victorian house in London converted into three flats, each let on a long lease. By its first decision of 22 October 2021 the FTT dismissed an application by Mr and Mrs Orchard to discharge Mrs Mooney's appointment and to allow management of the building to return to G Ltd, the company through which the leaseholders jointly own the freehold (the fourth respondent). By its second decision, of 4 April 2022, the FTT ordered Mr and Mrs Orchard to pay £17,500 in costs to the manager and to the leaseholder of another flat in the building, Ms Helen Orkin (the second respondent) because it considered that they had behaved unreasonably in making the application to discharge Mrs Mooney and in the way they had conducted it.

4. With the permission of this Tribunal in both cases Mr and Mrs Orchard appealed the FTT's decisions. The appeals were heard together and the Orchards were represented at the hearing by Mr David Warner, who had not appeared before the FTT. The manager again represented herself. Ms Orkin was represented by her solicitor, Mr Jonathan Ross, of Forsters LLP, who had appeared on her behalf in the FTT. The leaseholders of the third flat, Mr and Mrs Lambert, did not participate in the FTT proceedings or in the appeal. Sadly, since the FTT hearing Mr Lambert has died.

5. This is our decision on the appeal against the FTT's decision not to discharge the manager. We will issue a separate decision dealing with the costs appeal.

6. A full account of the background to the appeal can be found in a judgment of His Honour Judge Hellman handed down in the County Court at Central London on 6 October 2022 following a trial lasting four days in parallel court proceedings titled *Orkin v Orchard* E03CL337. The issues in this appeal turn less on the detailed history than on the circumstances in which the application to discharge the manager was made and on the evidence given to the FTT at the hearing on 6 October 2021. We will not repeat the

account of the facts given in the County Court judgment but will begin with a much shorter overview.

The facts in outline

7. Intermittently for more than twenty years water has been entering the building at roof level and penetrating to the flat on the first floor which belongs to Ms Orkin and is her home. The precise cause of the water ingress was not known but the point of entry into Ms Orkin's bedroom indicated that a defect was located somewhere in the area of the rear mansard roof or the terrace immediately adjoining it. The roof is not demised and responsibility for its repair lies with the freeholder. The surface of the terrace is within the demise of the top floor flat belonging to Mr and Mrs Orchard and it is accessible through a large dormer door and window from their flat.

8. Both the location of the defect and the extent of the parties' respective repairing obligations were in doubt. Work to the dormer carried out at joint expense in 2011 had not solved the problem. When more extensive work was proposed in 2017 it became clear that the leaseholders did not agree between themselves who should pay for it. The Orchards maintained that it was for the freeholder to carry out the work and for all three flats to meet the cost through the service charge, while Ms Orkin considered that sole liability lay with the Orchards as leaseholders of the top floor flat. By 2017 an impasse had been reached.

9. In August 2018 Ms Orkin applied to the FTT for the appointment of a manager under Part 2 of the 1987 Act. The Orchards supported the principle of the appointment but proposed a different manager, Mrs Mooney, who was appointed by the FTT for a term of three years in February 2019. Meanwhile, Ms Orkin's flat continued to be affected by water ingress during episodes of extreme weather.

10. On the day Mrs Orkin's application to appoint a manager was heard by the FTT she also began proceedings in the County Court against the Orchards and the freeholder. She claimed damages and an order that the Orchards, or alternatively the freeholder, carry out and pay for the necessary remedial work. In those proceedings Ms Orkin relied on expert evidence given by Mr Michael Kemp FRICS as to the cause of the water ingress. Mr Kemp had first reported on the problem in 2005 and his opinion has always been that the most likely route of water penetration was through the dormer door/window structure leading on to the Orchards' terrace.

11. The manager did not share Mr Kemp's analysis, and relied instead on the advice of her own surveyor, Mr Iain Pendle MRICS. In May 2019 he reported that the most likely cause was a defect in the mansard or in the threshold or step leading on to the terrace. Following an inspection on 30 September 2020 Mr Pendle modified his opinion and advised that the most likely source was a defect in the covering of the terrace in the vicinity of the step. After further intrusive investigations he expressed that conclusion in a report dated 3 March 2021. It was difficult for him to confirm his diagnosis because the asphalt surface could not be viewed without lifting tiles laid on a reinforced screed which sat on top of it. Nevertheless, having excluded other possible causes, Mr Pendle advised the manager that the tiles and screed should be removed to enable the asphalt to be

inspected and repaired. He also advised that responsibility for remedying the defect lay with Mr and Mrs Orchard.

12. When she was first appointed the manager had stated her intention to carry out the required remedial work and leave the County Court to determine who should pay for it. But with the benefit of Mr Pendle's opinion on the source of the problem and after taking legal advice, the manager changed course and on 21 October 2020 she informed the leaseholders that she was now satisfied that the Orchards were responsible for carrying out the work. On 30 March 2021 she served formal notice requiring them to undertake repairs to the asphalt within six weeks, failing which she threatened to exercise her power under the lease to enter the flat, complete the works and recover the cost from them.

13. While these exchanges were taking place between the manager and the Orchards, Ms Orkin sought access for her own surveyor, Mr Kemp, to carry out further investigative works to enable him to prepare a report for the County Court proceedings. The Orchards resisted that request. By now they had formed the view that as well as pressing them to carry out the work, the manager was colluding with Ms Orkin to support her claim in the court proceedings. The Orchards believed, or claimed to believe, that requests by Mr Pendle for access for further investigative work were really made at the instigation of Mr Kemp to gather information to further Ms Orkin's claim.

14. On 30 March 2021 Mr and Mrs Orchard applied to the FTT for the manager to be discharged.

The role of tribunal appointed manager

15. The FTT is given power to appoint a manager to act in relation to premises which contain two or more flats by section 24, Landlord and Tenant Act 1987, the relevant parts of which are as follows:

> "24 **Appointment of manager by a 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 the landlord 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 …, 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;

(ac) where the tribunal is satisfied –

(i) 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 Developments 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 Leasehold Valuation 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.

…

(9) The appropriate tribunal may, on 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 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."

16. The nature of a tribunal appointed manager's appointment was considered by the Court of Appeal in *Maunder Taylor v Blaquiere* [2002] EWCA Civ 1633. The issue in that case was whether a lessee was entitled to set off claims he had against his landlord in order to defeat or reduce a manager's claims for service charges. The Court of Appeal held that he could not. Aldous LJ explained the manager's position at [41]:

> "In my view the purpose of Part II of the 1987 Act is to provide a scheme for the appointment of a manager who will carry out the functions required by the court. That manager carries out those functions in his own right as a court-appointed official. He is not appointed as the manager of the landlord or even of the landlord's obligations under the lease. That being so, Mr Maunder Taylor was a court-appointed manager appointed to carry out those duties required by the order appointing him."

17. Aldous LJ's description of a manager as a "court-appointed official" may be a reflection of the fact that, until its amendment by the Housing Act 1996, the power to appoint a manager was exercisable by the court and not by a tribunal.

18. The consequences of the appointment of a person by a court have recently been considered by the Supreme Court in *Harcus Sinclair LLP v Your Lawyers Ltd* [2021] UKSC 32 which concerned the enforcement of non-compete undertakings given by an incorporated law firm rather than by an individual solicitor. In their joint Judgment Lord Briggs, Lord Hamblen and Lord Burrows (with whom Lord Lloyd-Jones and Lady Arden agreed) discussed the court's supervisory jurisdiction to enforce solicitors' undertakings. As they explained at [94] to [101] that supervisory jurisdiction has developed since medieval times as an aspect of the court's inherent jurisdiction over solicitors as "officers of the court" (attorneys were originally appointed by the court and were required to adhere to strict professional standards enforced by the court). The status of solicitors as officers of the court is now statutory but one consequence of that status remains that the conduct expected of them is "raised to a higher standard than the conduct required of ordinary men, in that it is subject to the special control which a Court exercises over officers. …" (as stated by Hamilton J in *United Mining and Finance Corpn Ltd v Becher* [1910] 2 KB 296, p 305). In *Fox v Bannister King & Rigbeys* [1988] QB 925 at p 928B-C, Nicholls LJ referred to the Court's inherent jurisdiction to enforce solicitors' undertakings being exercised, "not for the purpose of enforcing legal rights, but for the purpose of enforcing honourable conduct on the part of the court's own officers".

19. One consequence of accepting an appointment by a court is therefore that the appointee will be expected to adhere to the highest professional standards. Tribunals have no inherent jurisdiction over those whom statute gives them power to appoint, but section 24(9), 1987 Act, gives the FTT power to discharge an order appointing a manager. It is entirely reasonable for all those concerned to expect that a manager appointed by a tribunal will also adhere to the highest professional standards, and any tribunal will take care to satisfy itself that a proposed appointee has the necessary experience, competence and integrity to perform the functions required of them.

20. That expectation is reflected in the seriousness with which the FTT will investigate criticisms made of a manager, whether they are made in an application for the manager to be discharged or otherwise. In *Sadeh v Mirhan* [2015] UKUT 428 (LC) this Tribunal (HHJ Huskinson) said this, at [51]:

> "I consider that where tenants make serious criticisms to the FTT about the conduct of a manager appointed by the FTT then the tenants can expect the FTT to examine these allegations with care. The manager is an officer of the

FTT. The criticisms are being made against the manager as officer of the FTT."

The discharge application

21. The grounds on which the Orchards originally applied to discharge the manager are no longer central to their appeal. The application was supported by a lengthy statement of case and other documents, but in summary it alleged that the manager had failed to act impartially and had aligned herself with Ms Orkin while largely ignoring the Orchards, that she had failed to act in accordance with the order appointing her or to comply with the RICS Code of Practice on residential management, and that it was just and convenient to discharge the order. The Orchards also suggested that Ms Orkin's simultaneous commencement of proceedings in the County Court meant that the management order ought never to have been made as nothing could be achieved by it until the issue of liability to carry out the works had been resolved by the Court. They proposed that management of the building should return to the freeholder and that a managing agent should be appointed by the directors.

22. The application was made on 30 March 2021. Following a case management hearing on 10 June the FTT gave directions for the exchange of evidence but refused to order the manager or the freeholder to disclose a large number of documents requested by the Orchards. The Orchards then each filed evidence in support of the application on 11 July to which the manager replied with her own witness statement on 11 August. It is what happened between those two dates that is the main focus of the appeal.

Mr Pendle's 30 July report

23. The manager had decided to press ahead with the work recommended by Mr Pendle on the basis that the Orchards had not complied with the notice requiring them to repair the asphalt. Mr Pendle had put a specification out to tender and on 29 June 2021 the Manager wrote to Mr Ross, Ms Orkin's solicitor, informing him of that development and refuting a complaint that nothing was being done. She concluded her email by describing Mr and Mrs Orchard as "rogue freeholders" and suggesting "that we regroup, put all our efforts into alignment and take it from there".

24. On 16 July the manager's surveyor, Mr Pendle, carried out a further inspection of the Orchards' terrace with the assistance of a specialist roofing contractor. The purpose of the inspection was to expose the asphalt membrane and ascertain its condition, which required the removal of the surface tiles and screed. Mr Orchard was also present during the inspection, which lasted five hours.

25. On 30 July Mr Pendle reported to the manager on his investigations and conclusions. The manager has suggested to us that the report was a "draft" but there is no indication of that on the document, nor any suggestion that it was intended by Mr Pendle to be treated as provisional or subject to the manager's approval. It represented his advice to her following his most recent inspection.

26. Mr Pendle's report described his investigations in detail and advised that the asphalt had been found to be in fair condition and that there were "no fractures, bubbles, or any other defects with any of the asphalt that we inspected that would give rise to the ingress being suffered below." On completion of the investigation the area had been treated with a reinforced liquid waterproofing system. Despite this precaution there had been two further episodes of water penetration into the flat below in the week after the investigations which Mr Pendle believed were unlikely to have been caused by any defect in the asphalt.

27. Having ruled out water penetration through the step in his March 2021 report and having now found the asphalt to be in fair condition, Mr Pendle concluded in his 30 July report that the only other location in which water could enter the structure was through the tiled mansard roof. He now advised that the most likely defect was in the under sarking or detailing beneath the roof tiles and recommended that the area of the roof adjoining the dormer should be stripped and examined and then re-covered with a new modern membrane and fully re-tiled.

28. Under the heading "Responsibility" Mr Pendle pointed out that the "the tiled roof adjacent to the French doors is demised to the Freeholder". Although he did not say so in terms he was understood by those who read his report to mean that he now believed that the freeholder, and not the Orchards, was responsible for the remedial work.

29. When the manager received Mr Pendle's 30 July report she immediately sent it by email to Mr Ross, copying Ms Orkin, Mr Pendle and her own solicitor. Her covering email read:

> "Here is Iain's report. Let's speak on Monday when all have had a chance to read. I am not issuing it to the other parties until we have spoken."

30. Mr Ross responded to the manager's email on 3 August. He pointed out in some detail that Mr Pendle's conclusions were inconsistent with his previous findings and with the views of Mr Kemp and suggested that Mr Pendle's "latest comments do seem to us to smack more of desperation than any careful and thorough analysis". While thanking the manager for sight of the report, Mr Ross emphasised that in his view all leaseholders needed to be consulted and, in particular, "we do not want to do anything behind the back of Mr and Mrs Orchard".

31. The manager then discussed that response with Mr Pendle and his senior partner, Mr John Byers. It was decided that Mr Byers would now take the lead and in a brief exchange of emails with Mr Ross on 6 August the manager promised that Mr Pendle and Mr Byers would prepare a statement explaining why "the assumptions that you/Mr Kemp have made are not accurate". She complained that Mr Ross had "failed to take many issues into consideration" in his "handbagging" of Mr Pendle.

32. Notwithstanding Mr Ross's concern about consultation with other leaseholders, and despite repeated requests from the Orchards, the manager did not send a copy of Mr Pendle's 30 July report to the Orchards until 11 November 2021, by which time the FTT had dismissed their application to discharge her.

The manager's evidence to the FTT

33. The manager's evidence to the FTT was in the form of a witness statement confirmed by a statement of truth dated 11 August 2021. The narrative invoice filed in support of the manager's later application for costs shows that the statement was drafted by her solicitors on 8 and 9 August; a charge had also been incurred for her solicitor's consideration of Mr Pendle's report on 2 August. Mr Byers had not yet inspected the property (and did not do so until after the FTT's decision) so Mr Pendle's 30 July report remained the latest advice available to the manager. The inference we draw from the manager's email of 6 August to Mr Ross is that for the time being at least Mr Pendle and Mr Byers stood by Mr Pendle's report of 30 July.

34. The manager made no mention of Mr Pendle's report in her witness statement although she did refer to the fact that he had carried out a further inspection on 21 July. The absence of any comment on his conclusions implied that there had been no change in his views since his previous investigations in March. As to those earlier investigations, at paragraph 17 of her evidence the manager explained that Mr Pendle's reluctance to respond to questions from the Orchards was necessary to avoid prejudicing her position in future legal action against them, referring to "proceedings that it now seems will ensue because of Mr and Mrs Orchard's refusal to carry out repairs for which they are contractually liable."

35. The manager's evidence to the FTT about liability for the work continued in paragraphs 39 and 40 of her statement:

> "Having obtained legal advice on the repairing responsibilities of the parties under the leases, I was advised that Mr and Mrs Orchard were responsible for repairing the terrace. This is what prompted my email to the lessees on 21 October 2020.
>
> Whilst I may have previously been working under the impression that the repair of the terrace was a service charge item, I cannot simply ignore the advice of leading Counsel and continue to undertake works to a demised area for which Mr and Mrs Orchard are responsible."

36. Specifically in response to the Orchards' complaint that she was not impartial and had shared information with Ms Orkin and her advisers which she had withheld from them, the manager said this, at paragraph 43 of her evidence:

> "No party has been provided with privileged access to anything that they are not entitled to see and any request from Mr and Mrs Orchard would be treated in the same way as any other request."

37. On the same theme, at paragraph 47, the manager's evidence was that:

> "There has been no lack of transparency in my dealings with the leaseholders (including Mr and Mrs Orchard)."

38. The manager's evidence also responded to other criticisms of her by the Orchards, but the four passages we have quoted above are the most relevant to the appeal, which focusses on the inconsistency of that evidence with what is now known about the advice the manager had received and her communications with Ms Orkin and her advisers. Similar statements were made in the manager's formal statement of case, which was settled by counsel on 9 August and supported by a statement of truth dated 12 August. In the statement of case reliance was expressly placed on Mr Pendle's advice and the manager was unequivocal in attributing responsibility to the Orchards on the basis that the problem was with the roof terrace demised to them.

39. There is reference in some emails sent at around this time to the manager having been in hospital. The precise timing is not clear. An email from Mr Ross on 12 August asked after her health and said: "I am not sure if you have been in hospital this week?" That seems to have been correct, since the manager notified Mr Ross on 12 August that she could not deal with anything until the following week as "[I] have had surgery and am in a lot of pain". When he asked if she had yet responded to the discharge application she replied "all done and signed off yesterday". But the manager's statement of case for the appeal suggests the surgery may have been earlier:

> "From mid-July when reports and counter reports were being issued and while I was preparing my witness statement, I was undergoing surgery on my knee and was under heavy medication and without the funds to have legal representation. I do not believe my judgment was impaired as a result."

We place more weight on the contemporaneous indication that the manager was in hospital and had a painful operation on the day after she signed her witness statement and not during the month before. The manager's statement of case for the appeal was prepared in August 2022 and is not a reliable account on other matters (for example, it wrongly asserts that Mr Pendle was acting for the Orchards rather than for the manager). We have no reason to doubt that the manager was under heavy medication and is likely to have been in pain before her operation, although we note the manager's belief that this did not impair her judgment.

40. Finally, we record here that Ms Orkin also provided a witness statement to the FTT in opposition to the removal of the manager. No mention was made of Mr Pendle's 30 July report in that document, but it was also made clear that her own surveyor, Mr Kemp, did not agree with Mr Pendle's assessment (a disagreement which applied as much to his original diagnosis as to his later alternative hypothesis).

The hearing of the application and the FTT's decision

41. The hearing before the FTT on 6 October took place by remote video conference, a format which may have contributed to a lack of opportunity for the manager and Mr Ross, on behalf of Mrs Orkin, to contribute. The FTT explained at paragraph 16 of its decision that it had had serious concerns before the hearing that the Orchards would be able to make out their case for the manager to be discharged and, after hearing from Mrs Orchard, it took what it called "the relatively unusual step of making its decision

without hearing in full from the respondents". Thus the manager was not asked to give evidence and Mrs Orchard was not given the opportunity to ask her any questions; nor did Mr Ross make any substantive submissions.

42. The hearing began with the FTT dealing with an application for disclosure which had been made by Mrs Orchard in writing on 28 September. The application was very extensive and included some of the same material as had been refused by the FTT at the case management hearing on 10 June. At the top of the list of documents which the Orchards asked to see was a copy of any survey report compiled by Mr Pendle following his most recent inspection. The Orchards next asked for copies of all communications between the manager and Mr Pendle and between the manager, Mr Pendle and the other leaseholders, which were obviously relevant to their allegations of collusion and partiality. But the list also included a request that the freeholder be required to disclose all invoices, correspondence, survey reports, insurance claims and other documents relating to works to the building since 1985.

43. The FTT was very critical of the application, rightly describing the historic material as "overwhelmingly irrelevant". It was satisfied that some of the material requested did not exist or should already have been copied to all parties. It did not deal specifically with the report of Mr Pendle or with the manager's communications with other leaseholders but bracketed them together with the historic material and dismissed the application as "far too wide and grossly disproportionate". It also relied on the fact that the application was made shortly before the hearing and granting it would have required an adjournment.

44. Having then heard submissions on the application from Mrs Orchard the FTT concluded that no case for discharging the manager had been made out. It was satisfied that Mrs Orchard had an unrealistic and impractical idea of what it meant for a manager to be impartial. The manager was permitted to talk to one leaseholder without the knowledge or consent of other leaseholders and was entitled to take account of the views of a surveyor even though he may be acting for another leaseholder.

45. The FTT was satisfied that there was no evidence of collusion between the manager and Ms Orkin. It went on, at paragraph 31:

> "Even if a manager exceeded the bounds of impartiality, that is not a ground in itself for their discharge. In this case, there were no apparent consequences. The first respondent [the manager] clearly retained her own judgment at all times and did not delegate it to the second respondent [Ms Orkin] or her representatives. Of course, demonstrating partiality may damage a manager's ability to co-operate with those whom they don't favour but the problem here is that the first respondent does not agree with the applicants [the Orchards] about the cause and remedy for the roof problems. That is not being partial – the first respondent has been relying on her own expert advice from Mr Pendle and exercising her own judgment."

46. The FTT acknowledged that it might eventually be shown that the Orchards were right and that the manager and Mr Pendle were wrong. But for the time being it noted that based on "further evidence, particularly from Mr Pendle" the manager had concluded that responsibility for the works lay with the Orchards.

47. In view of the recent history and the lack of cooperation between the leaseholders the FTT described the Orchards' suggestion that management should revert to the freeholder which they jointly controlled as "preposterous". It considered that the manager could only be discharged if the Orchards were able to show that she was "performing her duties so badly that even their proposed alternative is better". Its assessment was that the manager "is not clearly wrong and is doing her best in circumstances which are challenging". No grounds had been made out for the discharge of her appointment.

Events since the FTT's decision

48. The FTT made its decision of 22 October 2021 without either it or the Orchards having seen Mr Pendle's report of 30 July or knowing that he now attributed responsibility for the works to the freeholder. When the FTT found no evidence of collusion and accepted the manager's evidence that she had been even-handed and transparent in all her dealings it did not know of the exchanges between the manager and Mr Ross on 29 June and 30 July (paragraphs 23 and 29 above). None of that material was in evidence because it had not been volunteered by the manager and because the FTT had refused the Orchards' requests for its disclosure.

49. Mr Pendle's senior partner, Mr Byers, inspected the roof and terrace on 18 October and provided a report to the manager on 29 October. His report was inconclusive and stated that "the exact defect or defects that are giving rise to the ongoing water penetration to flat 2 are not known." He nevertheless advised (as had Mr Pendle) that the rear mansard roof slope should be completely stripped and retiled, with renewed flashings and abutments, many of which were defective. The dormer itself required a considerable number of repairs and its condition and the manner in which it abuts the mansard was considered by Mr Byers to be the most likely cause of the ongoing water penetration. A complete replacement of the timber sill or threshold was required as it might provide a route for water to enter. He said that in general terms the works he recommended matched those identified in a report by Mr Kemp of 8 April 2021 (although we note Mr Kemp did not suggest that the mansard roof needed to be stripped and retiled). Mr Byers expressed no opinion on whether the Orchards or the freeholder were responsible under the lease for carrying out the necessary works.

50. The Orchards first saw Mr Pendle's report of 30 July on 11 November 2021. In their application to the FTT for permission to appeal they sought to rely on it as fresh evidence. The FTT acknowledged that, if the manager had had a report in her possession before the previous hearing which proved there was no defect in the terrace and that the leak came from an area which was the freeholder's responsibility, "this would be significant". It nevertheless refused permission to appeal on 26 November without asking to see a copy of the report (to the understandable frustration of the Orchards who had complied with the FTT's own instructions not to file documents in

support of their application). Permission to appeal was granted by this Tribunal, which was shown the report.

51. The FTT was again told of the existence of Mr Pendle's 30 July report in connection with the applications for costs made by the manager and Ms Orkin. The Orchards relied on it as demonstrating that in her witness statement and in her statement of case the manager had put forward a case which she knew to be incorrect. The FTT again appreciated the potential significance of such a report. If the Orchards were correct the report would have "turned the dispute on its head" and would have shown that the Orchards were right all along. Moreover, if they had continued with their previous arguments with knowledge of such a report, the manager and Ms Orkin would have been "misleading the Tribunal".

52. It is not clear from its costs decision of 4 April 2022 whether the FTT had yet seen Mr Pendle's 30 July report (a technical problem seems to have prevented it from opening a copy supplied by Mr Ross in response to the Orchards' submissions). In its decision the FTT referred only to Mr Ross's description of the report in his submissions on behalf of Ms Orkin. Mr Ross had referred to the report as "clearly errant" and pointed out that it had not been relied on by the manager and had been inconsistent with Mr Pendle's own previous expressions of opinion. On that basis the FTT concluded that the Orchards "have again misrepresented the situation" because the report of Mr Pendle was "not conclusive". The FTT did not address the timing of the report and the manager's witness statement or the inconsistencies between her evidence and what she had actually been advised by Mr Pendle, the surveyor on whose advice she had informed the FTT she was acting.

53. On 27 June 2022 following an application by the manager and a temporary extension, a differently constituted FTT panel varied the original management order and extended the period of the manager's appointment until 19 August 2023. No alternative appointee had been suggested and the FTT was satisfied that if the extension was not granted the circumstances prevailing before the manager's appointment would recur and the relationship between the leaseholders would further deteriorate. The FTT recorded that the Orchards had questioned the manager's integrity and had argued that she had not been impartial, but it appears to have been indifferent to those allegations. Without addressing them further, and without concerning itself with the evidence given by the manager to the previous panel, the FTT concluded simply that the manager was "an appropriate person to continue as manager".

54. We have referred to the FTT's decisions of 4 April 2022 and 27 June 2022 because they were relied on from time to time by the manager and Ms Orkin as demonstrating that the FTT had already considered the material relied on by the Orchards in this appeal and had found it to be inconsequential. Unfortunately, it does not appear to us that either FTT panel addressed that material with the seriousness it demands.

55. Finally, in a judgment handed down on 6 October 2022 after the trial of Ms Orkin's claim in the County Court His Honour Judge Hellman decided that the remedial works required to prevent the ingress of water were those recommended by Mr Kemp involving the replacement of the dormer door/window structure including the proper detailing of the roof terrace and step into the base of the new assembly. Mr Kemp had

been the only expert witness to give evidence at the trial. The Judge also decided that responsibility for carrying out that work lay with the freeholder as the dormer (including the door and window) formed part of the mansard roof which, in turn, was part of the main structure of the building; so too was the terrace, below the surface tiles. None of those components was included specifically in the Orchards' repairing covenant so they were therefore the responsibility of the Management Company (whose liabilities are the freeholder's following enfranchisement). The Judge concluded that "the manager, and not the Orchards, is responsible for carrying out the remedial works recommended by Mr Kemp."

The grounds of appeal

56. The Orchards' grounds of appeal were diffuse but in his skeleton argument and oral submissions Mr Warner confined himself to three essential points, each of which was within the scope of the permission originally granted.

57. The three essential grounds of appeal were:

    1. That on the basis of fresh evidence which the Orchards applied to be admitted, it was now apparent that the FTT had been given materially inaccurate evidence by the manager and had been misled.

    2. That the FTT had applied an inappropriate test of its own devising when considering whether the manager should be discharged.

    3. That the FTT had failed to give sufficient reasons for its decision.

The application to admit fresh evidence on the appeal

58. The Orchards first saw Mr Pendle's report on 11 November 2021 and other communications on which they wish to rely (the emails exchanges between the manager and Mr Ross on 29 June and 30 July 2021) were only disclosed to them in the course of the County Court proceedings. In their application for permission to appeal they sought to rely on the report as fresh evidence and the Tribunal directed that the admissibility of the new material would be considered at the hearing of the appeal. They made a similar application in relation to the email exchanges.

59. The admission of new evidence on an appeal against the decision of a court previously required that three conditions be satisfied, namely that (1) the evidence could not have been obtained for use at the original hearing with reasonable diligence; (2) if the evidence had been given, it would have probably have had an important influence on the result of the case; and (3) the evidence is apparently credible: see *Ladd v Marshall* [1954] 1 WLR 1489. Since the making of the Civil Procedure Rules the same three factors are treated as the relevant considerations governing the exercise of the discretion to admit new evidence now conferred by CPR 52.11(2)(b): see *Terluk v Berezovsky* [2011] EWCA Civ 1534 at [32].

60. The Civil Procedure Rules do not apply in tribunals, but the Court of Appeal has indicated that the *Ladd v Marshall* conditions should continue to apply to the admission of new evidence in appeals to the Upper Tribunal: see *Point West GR Ltd v Bassi* [2020] EWCA Civ 795, at [51].

61. The first condition is plainly satisfied, since the Orchards did all they could to obtain a copy of the latest report from Mr Pendle, including asking the manager to provide a copy, applying for its disclosure on 28 September and advancing the same application orally at the hearing on 6 October. While they were justifiably criticised by the FTT for the lack of proportionality in their application as a whole, none of the reasons it gave for refusing disclosure was a sufficient justification for not requiring the manager to provide the parties and the FTT with the up-to-date advice on which she claimed to be acting. We do not accept that the inclusion of their request for the report as one item in a tsunami of irrelevant disclosure suggests any absence of diligence on the Orchards' part. Mrs Orchard made it clear in her application that the report was the most important document she wished to see, and there was never any good reason for the manager to withhold it.

62. The second condition is also satisfied. The fresh evidence was directly relevant to the Orchards' allegations that the manager was not acting impartially as between the leaseholders and was communicating preferentially with Ms Orkin and her advisers while cutting them out. Mr Pendle's report was the latest advice available to the manager on the cause of the water ingress and it contradicted her claim that she believed the Orchards were responsible for remedying the problem based on her surveyor's advice. The manager's emails to Mr Ross showed that, contrary to her evidence that she had always been transparent in her dealings, she was providing information to another leaseholder which she was denying to the Orchards, and that she had decided they were "rogue" and that what was required was "alignment" against them.

63. It is not necessary for us to be satisfied that the fresh evidence would inevitably have resulted in the manager being discharged, but it would probably have had an important influence on the course and outcome of the Orchards' application. It would have required a proper appraisal by the FTT of the manager's behaviour and a consideration whether, in view of her lack of candour, it could continue to trust her. In our judgment a tribunal with access to all of the facts would have been more likely than not to have found that the Orchards' case had been made out and that the manager could not continue in post.

64. The third condition is also satisfied. It has not been suggested that Mr Pendle's report did not represent his professional opinion and the most up to date advice the manager had when she signed her statement of case and witness statement, nor that the emails exchanges with Mr Ross were not genuine. It is immaterial that the manager eventually lost confidence in Mr Pendle (although she initially defended him) or that his diagnosis of the problem was not shared by Mr Kemp, the only surveyor to give evidence to the County Court. What matters is that the manager gave a misleading account to the FTT of the advice she had received and the manner in which she had conducted her relationship with the leaseholders.

65. On behalf of Ms Orkin, Mr Ross did not resist the introduction of the fresh evidence.

66. In her statement of case for the appeal the manager took issue with the introduction of the fresh evidence and disputed the first and second *Ladd v Marshall* conditions. She suggested that because the FTT was aware that Mr Pendle had prepared a further report and refused to order its disclosure, it was not new material and it could be inferred that knowledge of the content of the report would have made no difference to its decision. We do not accept this submission. The FTT did not see the report and had no reason to doubt the evidence it received from the manager, which implied that Mr Pendle's views had not changed. It based its decision of 22 October on her assurance that she was behaving impartially and acting on Mr Pendle's advice. The report, and the email of 30 July, showed that for at least the last three months neither of those assumptions was correct.

67. We are satisfied that the relevant conditions for the introduction of fresh evidence are satisfied in this case and that in order to deal with the appeal fairly and justly the Orchards should be entitled to rely on Mr Pendle's report and the manager's email exchanges with Mr Kemp.

Issue 1: Should the FTT's decision be set aside because it was based on misleading evidence?

68. There are two possible routes to a determination of this aspect of the appeal. The first is to treat it as an appeal against the FTT's findings of fact that, contrary to the Orchards' suggestions, the manager had acted impartially, had not fabricated evidence, and "has been relying on her own expert advice from Mr Pendle and exercising her own judgment".

69. The alternative would be to treat the appeal as a challenge to the FTT's exercise of its discretion. Section 24(9), 1987 Act, gives the FTT power to vary or discharge a management order. That power is a discretionary one and must be exercised after taking into account all material considerations.

70. We do not consider there is any real practical difference in this case. A decision that the manager had acted impartially and appropriately in her dealings with the leaseholders is not a conclusion as to primary facts. It involves assessing the situation, weighing up competing factors and determining whether a particular standard of performance had been achieved. It is therefore what is often referred to as a "evaluative" decision. In that type of case an appellate tribunal should be very slow to substitute its own view for that of the tribunal of first instance. In *Prescott v Potamianos* [2019] EWCA Civ 932, at [76], the Court of Appeal summarised the proper approach of an appellate court or tribunal asked to review a first instance tribunal's finding of fact based on an assessment or evaluation of a number of different factors:

> " … on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion."

There is no relevant difference between that approach and the proper approach to an appeal against the exercise of a discretion.

71. In either case it is necessary to begin by identifying the extent to which the fresh evidence undermines the factual basis of the FTT's decision. We have already begun this task when considering whether the second of the *Ladd v Marshall* conditions was satisfied. The fresh evidence appears to demonstrate that, contrary to the FTT's understanding, the manager was no longer following Mr Pendle's advice about the cause of the problem, because his advice had changed. His original advice concerning the most likely source of water ingress was also presumably the basis of the legal advice that the Orchards were liable to meet the cost of the work which the manager referred to in her witness statement.

72. Mr Ross emphasised in his submissions that it had never been any part of Ms Orkin's case that the cause of the problem of water ingress was a defect in the asphalt covering of the Orchards' terrace. Mr Kemp had considered and rejected that possibility and it was not the case that the manager and Ms Orkin's advisers were acting in a coordinated way. It had not been the manager's practice to keep him informed of what was going on or to copy her correspondence with the Orchards to him. He had urged the manager to be open about the report and to share it with the Orchards but he considered the relationship with the manager to be "delicate" and he did not take it upon himself to hand the report over to the Orchards. He had not been given the opportunity to address the FTT, but he thought he probably would have mentioned the report if he had been called on during the hearing.

73. At the hearing of the appeal the manager addressed those parts of her witness statement which appeared to be inconsistent with the fresh evidence. She emphasised the complexity of the position she had found herself in and explained that it had not been her intention to mislead the FTT, although she acknowledged that that may have been the effect of her evidence. She said that Mr Pendle's report had been a draft and when we pointed out that it did not say so on its face she explained that she regarded it as a draft because she had not agreed to it being issued to the parties. She had decided to disregard the report because it was inconsistent with Mr Pendle's previous advice. She had sent the report to Ms Orkin's solicitors so that it could be passed on by them to Mr Kemp and said it had been a mistake not to send it to the other leaseholders. She did not know why she had not given the FTT an account of Mr Pendle's change of position in her witness statement but said she would have done so if she had been asked questions at the hearing.

74. Nothing the Manager said by way of explanation altered the fact that the impression she gave the FTT in her evidence was inconsistent with the facts as she knew them to be. Had the FTT been aware of the report it could only have concluded that she had decided to maintain the course on which she was set despite the advice on which it was based having been withdrawn and replaced by advice that pointed to an entirely different conclusion. It could only have concluded that her statement that "no party has been provided with privileged access to anything that they are not entitled to see and any request from Mr and Mrs Orchard would be treated in the same way as any other lessee" was not true. Whether the FTT's decision to dismiss the application to discharge the management order is treated as an exercise of discretion, or as an evaluative decision that the manager's performance was satisfactory, it was arrived at without knowledge of the true facts which were more than capable of supporting the opposite conclusion. For that reason it must be set aside.

Issue 2: Did the FTT apply the wrong test when considering whether the Manager should be discharged?

75. One question prominent in the FTT's thinking when it considered if the management order should be discharged was whether the standard of management being achieved by the manager was so poor that the alternative proposed by the Orchards would be preferable. That alternative was a return to management by the leaseholders.

76. Mr Warner was critical of the FTT's approach and said that it misapplied section 24(9A), 1987 Act, which was not relevant to an application made by a leaseholder, who is not a "relevant person" (meaning a landlord or other person with management responsibility). When a relevant person applies to vary or discharge a management order the FTT is required to refuse to make the proposed change unless it is satisfied that it will not result in a recurrence of the circumstances which led to the order being made. That restriction does not apply to an application made by a leaseholder.

77. We do not agree that the FTT applied an inappropriate test or gave too much weight to the consequences of the proposed discharge for the future management of the building. The unattractive prospect of a return to self-management is clearly a relevant consideration whatever the status of the person making the application to discharge. The statute makes it the critical consideration where the applicant is the person to whom management will revert, but we do not find it surprising that the FTT also regarded it as extremely important in this case. But it was clearly not the only consideration the FTT took into account. It also based its decision on its assessment that the manager was doing her best in a difficult situation and the course she had taken had not been shown to be wrong. On the basis of the information it had received, and which it had no reason to doubt, we do not think there was any material error in the way the FTT approached the application. If this was the only ground of appeal, the appeal would fail.

78. As we have already decided that the FTT was misled and that its decision must be set aside, the real issue for us is what test we should apply if we decide to remake the decision rather than remit it for redetermination by the FTT.

79. The statute provides very little guidance on how an application to vary or discharge a management order should be approached, but that cannot be a surprise given the variety of circumstances in which such an application may be made. The standard which section 24(2) requires the FTT to apply when considering whether to appoint a manager (in addition to being satisfied of a particular ground of appointment) is whether it is "just and convenient" to do so. In *Orchard Court Residents' Association v St Anthony's Homes Ltd* [2003] EWCA Civ 1049 (an application for permission to appeal) the Court of Appeal decided that it is not necessary for the section 24(2) threshold conditions themselves to be satisfied when an application is made to vary or discharge a management order under section 29(3). We are satisfied that any tribunal which addresses such an application by asking whether it is just and convenient to vary or discharge an existing order will not misdirect itself.

Issue 3: Did the FTT give sufficient reasons for its decision?

80. Because we have already decided to set aside the FTT's decision this ground of appeal does not now arise but we do not consider there is any doubt about why the FTT dismissed the Orchards' application. Its reasons are clear enough and if this was the only ground of appeal it would fail.

Consequences of our decision

81. For the reasons we have given the Orchards' first ground of appeal succeeds and we set aside the FTT's decision of 22 October 2022.

82. The question then arises under section 12(2)(b), Tribunals, Courts and Enforcement Act 2007 whether we should remit the application to the FTT for reconsideration or remake it ourselves.

83. No party asked for the case to be remitted. Mr Warner urged us to discharge the manager and leave the leaseholders to appoint a management company to manage the property on their behalf. Mrs Lambert wrote to the Tribunal before the hearing expressing her alarm that the appeal might not bring this dispute to an end. On behalf of Ms Orkin, Mr Ross urged us to confirm the manager in her appointment. The manager herself asked to be allowed to remain in post for the remainder of her extended term to enable her to complete the work required to make the building watertight.

84. We are satisfied that we have sufficient material to enable us to make a decision on the application to discharge the Manager without remitting it to the FTT. Were we to remit it is unlikely that a hearing could be arranged for several months and the parties would be put to additional expense in preparing for it. Meanwhile they would remain in limbo and it would be unlikely that progress would be made towards carrying out the works. We have therefore decided that the better course is to remake the decision ourselves.

85. In deciding whether to discharge the management order we give no weight to the FTT's decision of 27 June 2022 to extend the order for a further year. That decision was made without any serious consideration of the fresh evidence we have seen. There has been no appeal against that order, but nor do we consider an appeal is necessary. This appeal was extant when the variation order was made and if we were to discharge the management order it would be discharged as varied.

86. Nor do we place weight on the bulk of the material relied on by the Orchards in support of their original application. Mr Warner sensibly did not suggest that it demonstrated any sustained pattern of behaviour deliberately intended to damage the Orchards' interests or favour Ms Orkin. In particular, the suggestion that there was collusion between the manager and Ms Orkin and her advisers to assist her in the litigation was not made out. The only solid foundation of the application to discharge is the fresh evidence, all of which is concerned with the manager's reaction to the application itself and her persistence in a course of action which, until that point, she had been justified in pursuing.

87. In considering the application we take account of the circumstances as they now are. In our judgment there was considerable force in Mr Warner's submission that the purpose of the management order was liable to be frustrated from the outset by the County Court

proceedings. The manager could not make progress without funds, but she could not raise funds through the service charge while there was disagreement over the location of the defect and liability to pay. It did not matter whether that issue was determined by the Court or by the FTT but until it was determined little was likely to be achieved by the manager. But that is no longer the position. The Court has determined the cause of the water ingress and that responsibility for remedying it lies with the freeholder. It has also determined that the work which must be undertaken is that described by Mr Kemp in his evidence. The manager is not party to the Court proceedings but she now agrees that the work suggested by Mr Kemp is required. She has put that work out to tender and has invited comments from the leaseholders (on the basis of her preferred tender she anticipates a total cost of about £30,000). There are practical issues to consider, including the route by which access will be taken to the roof, but there is no reason to think those issues will not be capable of being overcome since both the leases and the management order contain all the necessary rights.

88. The only obstacle to the work now progressing is the availability of funds. We were told by Mr Ross that Ms Orkin would pay her contribution whenever she was requested to do so. Mr Warner said the Orchards would do the same. The manager expressed some uncertainty about whether Mrs Lambert would be in a position to pay her contribution promptly and it may be necessary for the other parties to advance funds in the short term to cover a shortfall. Mr Ross said that Ms Orkin would be willing to cover part of any shortfall and the manager said that she would also be prepared to lend up to £10,000 to the service charge account to enable the work to progress. Whether that would be necessary would depend on the Orchards' willingness to match what Ms Orkin had offered.

89. The current management order will expire on 19 August 2023, in a little under five months' time. The manager told us that the lead in time for manufacturing a new door/window assembly was 10 weeks and she was confident that the work could be completed in the remaining period available to her if she was able to give instructions without further delay. She was very anxious to carry on and complete the work. We do not know how justified the manager's confidence is, but the remedial work described by Mr Kemp does not appear to be especially complicated or time consuming.

90. We are satisfied that there is little realistic prospect of the work being completed by the end of the summer if the manager is discharged. No other person has been proposed as a replacement manager and responsibility for undertaking the work would fall on the freeholder. Even if the leaseholders, in their capacity as directors of the company, were able to find and agree on a contractor and on someone to supervise the work on their behalf, the tendering process undertaken by the manager would probably have to be redone and a considerable amount of time would be likely to be wasted. We have no confidence that without the intervention of a third party the Orchards and Ms Orkin would be able to reach agreement and what the manager referred to as their toxic relationship would be likely to discourage contractors and professionals from becoming involved with them.

91. These factors all point in the direction of allowing the manager to remain in post for the remaining five months of her term. Weighing heavily on the opposite side of the balance is the manager's lack of candour with the FTT when her performance was challenged.

92. The manager gave no coherent explanation for her conduct. The account in her statement of case for the appeal was muddled and, in some respects, clearly inconsistent with the undisputed facts. The explanation offered during the hearing, that Mr Pendle's report was a draft which the Manager never took seriously, is inconsistent with her original defence of it when it was challenged by Mr Ross and does not explain why she continued to assure the FTT that she was acting on Mr Pendle's advice.

93. We have no doubt that this appointment was more challenging than the manager had previously encountered (and we are aware that she is very experienced and has dealt with other difficult appointments). The Orchards and Ms Orkin's advisers were extremely demanding, and the manager was caught in crossfire. That does not excuse her original witness statement, but it does suggest a reason why the manager behaved so defensively when her performance was challenged. We think it likely that she had become convinced since at least October 2020 that the source of the problem was in the asphalt covering of the terrace and on that basis she was advised that the Orchards were responsible. She remained convinced despite Mr Pendle's change of view. She may then have lost confidence in Mr Pendle and not been prepared to act on his final assessment without confirmation from Mr Byers, but she was not willing to make any concession to the Orchards in the course of their application to remove her. That mindset led to the FTT being misled.

94. There are two additional factors which we bear in mind. First, although the manager signed her statement of case and witness statement, and must take personal responsibility for their contents, they were drafted for her by others and signed by her at a time when she was about to undergo a painful operation on her knee. We have insufficient evidence to reach any conclusion on whether she signed the documents without considering them with the care that they deserved, but in her oral submissions she told us that she had been taking significant medication at that time. We think that the suggestion in her statement of case that the treatment she was receiving had no effect on her judgment may well not be correct.

95. We also think it likely that the manager would have corrected the misleading impression given by her written evidence if she had been asked questions about it at the hearing on 6 October 2021. But the FTT assumed that what it had been told by its own appointee was a truthful account of the basis on which she was acting and dismissed the application without calling on her. Again, the manager bears responsibility for the fact that the FTT was misled, but had she been represented, or had the hearing been conducted face to face rather than remotely, we think it likely that she would have been able and willing to give an accurate account.

96. These observations are not intended as excuses for the manager's conduct but as matters which we bear in mind when considering whether the just and convenient course, as matters now stand, would be for the manager to be discharged on the grounds that neither the Tribunal nor the parties can have confidence in her. We do not believe that would be either a just or a convenient outcome, or that her conduct necessitates it. It would be unjust to the parties who have funded the manager during her appointment and who would be deprived at the end of any benefit from her involvement. It would be unjust, in particular, to Ms Orkin and Mrs Lambert, both of whom are desperate for an early resolution. It would not contribute to an early resolution and for that reason it would not

be "convenient", to say the least. Finally, we have sufficient confidence that the manager will discharge her remaining responsibilities in a professional manner to allow her to remain in post rather than sending the parties back to the starting line with nothing having been achieved.

97. For these reasons, which are different from those given by the FTT and are based on different evidence, we dismiss the application to discharge the management order.

Mrs Diane Martin MRICS FAAV
Member
President

Martin Rodger KC
Deputy Chamber

3 April 2023

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.