



London Rent Assessment Panel

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 24 OF THE LANDLORD AND TENANT
ACT 1987**

Case Reference: LON/00AN/LVM/2012/0009

Premises: 5 Peterborough Villas, London SW6 2AT

Applicant	:	Mr Andrew Strong of Atlantis Estates Limited	
Representative	:	Mr A Strong	In Person

Respondents	:	(1) Mrs Jackie Payne	Flat A
		(2) Ms Renuka Wickramaratne	Flat B
		(3) Mr Enrique Britto	Flat C
		(4) Mr Marcus Shields	Flat D

Representatives	:	Mrs J Payne, Ms R Wickramaratne and Mr Marcus Shields	In Person
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Date of Application: 22 October 2012

Date of Hearing : 25 March 2013

Date of Decision : 15 April 2013

Leasehold Valuation	Mr John Hewitt	Chairman
Tribunal	:	Mrs Sarah Redmond BSc (Econ) MRICS
		Mr Leslie Packer

Decisions of the Tribunal

1. The Tribunal determines that:
 - 1.1 The Order dated 24 February 2011 made in Case Ref: LON/00AY/LAM/2010/0032 pursuant to which the Applicant was appointed Manager and Receiver of the subject Premises shall be (and is hereby) varied by the addition of paragraphs 7 – 16

which are set out in Appendix 1 to this Decision (pages 12 and 13 below) ; and

- 1.2 No order shall be made pursuant to section 20C Landlord and Tenant Act 1985 in connection with the costs of the Applicant incurred in connection with these proceedings.

The Application

2. The Applicant, Mr Andrew Strong of Atlantis Estates Limited (Mr Strong), was appointed as Manager and Receiver of the Premises pursuant to an Order of a leasehold valuation tribunal dated 24 February 2011 made in Case Ref: LON/00AY/LAM/2010/0032 (the Principal Order).
3. By an application dated 22 October 2012 Mr Strong sought clarification of and a variation to the Principal Order on the footing that he had been unable to perform his duties as Manager and Receiver. The gist of his complaint was that the four lessees had continued to be in dispute over certain matters concerning the Premises, and that some of them had not co-operated with him; indeed some had sought to obstruct and prevent him from performing his duties.
4. The subject Premises were originally constructed as a house. Subsequently they were adapted to comprise four self-contained flats. The flats have been sold off on long leases. Each of the four Respondents is now the registered proprietor of one of those leases. Each lease provides for the payment of a contribution to the costs and expenses incurred by the landlord in fulfilling its obligations. The amount of each contribution is 25%.

The freehold interest is vested in three of the Respondents, namely Mrs Payne, Ms Wickramaratne and Mr Britto.

5. The application made by Mr Strong was supported by Mrs Payne (at least to a very large extent), it was not opposed by Mr Britto and it was (strongly) opposed by Ms Wickramaratne and Mr Shields. Mr Britto did not take any formal part in the proceedings.

The background

6. The Principal Order was made following a hearing which took place on 31 January 2011. The Decision giving the reasons for making the Principal Order is dated 24 February 2011 and it sets out the then material background which we do not need to repeat here. Suffice to say:
 - 6.1 On that occasion the Applicants were Ms Wickramaratne and Mr Shields and they were proposing that a Mr David Price of James E Fisher & Son (Mr Price) be appointed Manager.
 - 6.2 The Respondents to that application were said to be the three joint proprietors of the freehold interest plus a Mr David Roberts

who was said to be representing Mr Britto. The Respondents opposed the appointment of Mr Price (save for Ms Wickramaratne) and instead proposed that Mr Strong be appointed Manager.

- 6.3 There was an issue between the Respondents to that application as to whether the Respondents acting together as joint proprietors of the freehold had all freely appointed Mr Price to be their managing agent. Evidently only Ms Wickramaratne had signed the letter purporting to appoint him.
- 6.4 One of the key features which persuaded the tribunal to appoint a manager and a receiver and to make the Principal Order was that there were problems with the management of the Premises, the three joint proprietors of the freehold being unable to act together and effectively manage the Premises, that urgent works of repair and redecoration were required, but that no effective progress was being made. The evidence was that Mrs Payne and Mr Britto had lost confidence in Mr Price. In the event the tribunal appointed Mr Strong as Manager and as Receiver.
7. Subsequently Ms Wickramaratne sought permission to appeal the appointment of Mr Strong but permission to appeal was refused in May 2011.
8. In the spring of 2012 Ms Wickramaratne and Mr Shields made an application that Mr Price replace Mr Strong as Manager, Case Ref: LON/AY/LVM/2012/0001. The application was refused. The detailed decision is dated 12 July 2012. It should be read as part of this decision because it sets out further material background information. For present purposes we draw attention to paragraph 25 which opens with these words:

"We conclude that the current disputes and management difficulties that have lasted for several years and which led to the appointment of Mr Strong in 2011 continue unabated. They are the product of profound disagreements amongst the three owners of the freehold. It is as if the freeholders have forgotten why this tribunal ordered the appointment..."

The sentiments expressed continue to be apposite.

The gist of the case for Mr Strong

9. Mr Strong told us that he had been able to insure the Premises and carry out some routine cleaning and maintenance functions. He had made some progress with the project for major works and urgent repairs.

10. Working with an independent building surveyor a specification of works had been prepared building upon a specification prepared previously under Mr Price's stewardship. Mr Strong said he completed the first stage of a section 20 Landlord and Tenant Act 1985 consultation process and had received and responded to observations made by some of the lessees. Two lessees had nominated a contractor to whom Mr Strong should send invitations to tender. Mr Strong said he had done so and that one had submitted a tender but the other had declined to do so. Mr Strong also invited other contractors to tender and altogether six tenders had been received.
11. The tender documents segmented several discrete aspects of the works depending on the degree of urgency involved. This was to enable Mr Strong to prioritise works into phases should it turn out to be too costly to have all the works carried out as the one project.
12. Of the tenders submitted the best price achieved was £93,750 for all of the works. In addition the surveyor's professional fees for supervising the contract would be 8% + VAT, a total of £9,000.
13. Mr Strong recognised that such expense was considerable to all four lessees and his professional view was that the works could and should be phased and the most urgent works carried out first as Phase 1. In broad terms these works included:

Internal:

Removal of some asbestos, plastering to common parts, repairs to bannisters/stair rails, replacement of missing skirtings, boxing in to conceal surface mounted pipework, replacement of carpets, removal and replacement of switches and face plates, replacement of lighting, carrying out an electrical test, installation of smoke detectors and internal redecoration

External

Erection of scaffolding, overhaul of the roof and patch repairs as required, repairs to guttering, rendering and railings, replacement of a flat roof at the rear of the Premises, tidying up of surface mounted cabling and external redecorations to the windows doors and the rendering.

14. Again in broad terms Mr Strong considered that he would be able to deliver the internal works at a cost of about £15,000 and the external works at a cost of about £40,000 inclusive of VAT and professional fees. The total for Phase 1 is thus in the region of £55,000 in Mr Strong's view.
15. Understandably Mr Strong is not able to place a contract for the Phase 1 works unless and until he is in funds provided by the Respondent lessees. Here Mr Strong has met with difficulties, including lack of cooperation and positive obstruction on the part of some lessees.

16. Evidently, Mr Strong had been informed that some or all of the lessees had paid sums to Mr Price, when he was purportedly appointed as the freeholders' managing agent to be held by him on account of the cost of the major works he was instructed to organise. In the event Mr Price did not make that much progress with the project and his stewardship of the Premises came to an end upon the appointment of Mr Strong as Manager and Receiver. Mr Strong was led to believe that Mr Price was holding some £9,500 in uncommitted service charges. Upon his appointment as Manager and Receiver Mr Strong wrote to Mr Price asking him to send over the funds he was holding and the books, accounts, records and documents his firm was then holding as the managing agent of the freeholders. Mr Price declined to do so, evidently at the behest of one or some of the freeholders.
17. In the event Mr Strong's company, Atlantis Estates Limited, commenced proceedings in Reading County Court seeking an order for the delivery up of the papers, records, accounts and the funds. The proceedings were contested and defended by Mr Price. By an order made 28 September and drawn 1 October 2012 District Judge Darbyshire dismissed the claim and ordered the claimant (Atlantis Estates) to pay the defendant's (Mr Price) costs which the judge assessed at £6,001.20.
18. Mr Strong told us that he had discharged that costs order and that he has himself incurred legal costs and fees of £4,897.00 in connection with the proceedings. The two sums (together 'the legal costs') amount to £10,898.20.
19. Against the above background Mr Strong made an application to the tribunal for clarification of his duties and powers as Manager and Receiver and for further directions. Amongst other things he sought guidance as to the funding of the major works costs, and whether he was entitled to commence court proceedings in the event of non-payment. He also sought guidance as to whether he was entitled to recover from the lessees the legal costs incurred in the unsuccessful court proceedings against Mr Price. He also sought clarification as to whether he was entitled to additional remuneration in respect of his duties given the considerable additional work imposed on him as a consequence of the lack of cooperation on the part of some of the lessees.

The gist of the cases for the Respondents

20. In general terms Mrs Payne was sympathetic to the application and was anxious that Mr Strong remain in post to carry out his duties. Although not formally representing Mr Britto, a number of written representations were submitted signed jointly by Mrs Payne and Mr Britto's daughter, Francis, who evidently does represent him. We were told that Miss Francis Britto was unable to attend the hearing due to work commitments.

21. Mrs Payne did express some concern at the cost of the Phase 1 works Mr Strong proposed to carry out and asked him to look again at the specification and seek further tenders. Mr Strong said that he was prepared to do so but obviously subject to his professional obligations and good practice.
22. The application was vigorously contested by Ms Wickramaratne and Mr Shields. Clearly they did not want Mr Strong appointed in the first place and they do not appear to have accepted or embraced his appointment or sought to work with him to mutual benefit.
23. Ms Wickramaratne in particular was highly critical of Mr Strong and alleged that he has not properly and effectively managed the Premises and that he failed to respond to correspondence in an effective and timely manner. In consequence Ms Wickramaratne decided to withhold payment of service charges requested by Mr Strong. Ms Wickramaratne was also highly critical of the specification of the Phase 1 works and was confident that she could deliver a scaled down scope of works at much lower cost.

Discussion - the law

24. For avoidance of any doubt we have set out in Appendix 2 to this Decision the full text of section 24 of the Act, as amended.
25. As originally drafted the jurisdiction to appoint a manager and/or a receiver was conferred on the court. As a result of amendments made in the Commonhold and Leasehold Reform Act 2002 that jurisdiction was passed to a leasehold valuation tribunal. It is reasonable to assume that when Parliament conferred the jurisdiction on the court to appoint a manager and/or a receiver Parliament was aware of the wide range of powers available to the court to enforce its orders.
26. We conclude that the appointment of a manager and/or receiver is a very serious step to take and one that is not to be made lightly. In many respects it is a course of last resort.
27. Originally the court, and now the leasehold valuation tribunal, has very wide powers, conferred by subsections 24(5) and (6) to make orders to enable the manager and/or receiver to carry out the duties vested in him.
28. There is a significant difference between the functions of a manager appointed under section 24(1)(a) and the functions of a receiver appointed under section 24(1)(b). A receiver stands in the shoes of the landlord whereas a manager does not. The difference between the respective functions and powers was considered by the Court of Appeal in *Maunder Taylor v Balquiere* [2002] EWCA Civ 1633; [2003] 1 WLR 379. It was made clear that a manager acted in his own capacity and not as agent for or in the shoes of the landlord. There is no privity

of estate as between a manager and the lessees. A manager derives his authority from the order appointing him and he is an officer of the tribunal. A manager is not obliged to fulfil all of the obligations imposed on the landlord under the leases, but the order appointing him will specify what obligations he is to undertake. It was also made clear in *Maunder Taylor* that an order appointing a manager may confer on him rights or obligations not present in the leases of the development.

Originally, before the amendment of the legislation, a manager appointed by the court was regarded as an officer of the court. Obstruction of the duties of a manager appointed by the court was regarded as a contempt of court and punished as such. Now a manager is appointed by a tribunal but the approach to his powers and duties remains analogous to that applied to officers of the court.

In general terms the functions of a manager are usually to manage the premises on a day to day basis, insure the premises and procure the provision of such services and repairs and redecorations as may be appropriate to the development. The manager need not necessarily deal with all of these matters personally and he is entitled to appoint managing agents and specialist advisers where appropriate. He will of course retain ultimate responsibility for policy matters and strategy and decision making to ensure the effective stewardship of the development.

A manager is expected to be professional, autonomous and independent.

29. In contrast a receiver, as the name suggests, stands in the shoes of the landlord and has the function to gather in assets of the landlord over whom he has been appointed. This may include ground rents payable to a landlord and will generally include service charge funds held by or on behalf of a landlord. The effect of a receivership order is to restrain the landlord from dealing with those funds and requires the landlord to pass them to the receiver. Receivership operates as an injunction – see the Court of Appeal decision in *Sartoris v Sartoris* [1892] 1 Ch 11, CA. Thus any failure by a landlord (or his agent) to hand over funds to a receiver would amount to a contempt and would expose the landlord (and his agent) to contempt proceedings.

Sometimes the distinction between the functions of a manager and those of a receiver can be important in terms of equitable rights to set-off but that distinction is not relevant to the case in hand.

Discussion – specific issues

The funds held by Mr Price

30. The information available to us is that Mr Price held funds on account of service charge expenditure as managing agent for the freeholder. Those funds would have been held on the statutory trust imposed by

section 42 of the Act. On this footing and upon Mr Price's appointment as managing agent coming to an end upon the appointment of Mr Strong as Manager and Receiver we would have expected uncommitted service charges held by Mr Price on trust to have been paid over to Mr Strong in his capacity as Receiver.

31. However this did not happen. There is a factual issue to resolve but it appears that at one time Mr Price was willing to hand over the funds provided that each lessee signed an authority to him to do so. Apparently some of all of the lessees signed such an authority but then one or some of them recanted and withdrew such authority. In the event Mr Price did not hand over any funds.
32. We have seen the order of District Judge Darbyshire dismissing the claim brought against Mr Price. We were told that at the hearing before the judge both parties were represented by counsel. We do not know what evidence and submissions were presented to the judge. We have not seen a transcript of his judgment and we do not know the reasons that led to the judge to dismiss the claim. We have been told that Mr Price has paid the sum held by him into court and there was a suggestion put to us that individual lessees who may have a claim to some of those funds have permission to apply to the court for an order for payment out.
33. Mr Strong sought guidance from the tribunal as to any further steps he should take in the court proceedings for the sums to be paid out to him. For the reasons set out later we have empowered Mr Strong to impose a levy on the four lessees so that he will be in funds to place a contract for the Phase 1 works. In these circumstances we conclude that there is no point in Mr Strong being put to trouble and expense with regard to the sums held in court. It seems to us that the appropriate course is for those lessees who have a claim on some of the funds held in court to apply to the court for their claim to be determined by the judge.

The legal costs

34. A further issue relating to the funds held by Mr Price is whether Mr Strong is able to recover the costs incurred by him in connection with the proceedings. The total of the costs incurred directly by Mr Strong and the amount of the costs order against him is £10,898.20. Mr Strong sought an order that these be paid by the Respondent lessees. There is an issue between the Respondents as to who may have been behind Mr Price and his defence of the claim. Mrs Payne was clear that she was always willing for her share of the funds to be paid over to Mr Strong and she alleged that other lessees encouraged Mr Price to be uncooperative and to defend the claim. She submitted that those lessees alone should bear the legal costs.
35. The difficulty for us is that there is no evidence before us as to the reasons that led the judge to dismiss the claim. Also there was no evidence before us as to the conduct of Mr Price during the court

proceedings and as whether any lessees were aiding and abetting Mr Price in the conduct of those proceedings and if so, who those lessees were. These are all matters which may have to be the subject of a detailed fact finding exercise and such an exercise was not appropriate for us to conduct on the hearing of the subject application. In these circumstances we considered it appropriate to empower Mr Strong to impose a levy on the four lessees of £2,500 each so that he may hold and ring-fence the sum of £10,000 pending a determination as to whether Mr Strong is entitled to recover the legal costs from the lessees and if so, in what proportions.

The major works

36. It was plain to us from reading the decisions of the two previous hearings and from the evidence of Mr Strong that the key factor that led to his appointment as Manager was that he should procure the urgent major works to be carried out. It is disappointing that over two years after his appointment the lessees have frustrated the carrying out of these works. This cannot be allowed to continue.
37. The function of the leasehold valuation tribunal on an application to appoint a manager is to consider whether it is satisfied that (here) the landlord is in breach of obligations to the lessees relating to the management of the premises in question and, if so, whether it is just and convenient in all the circumstances of the case to appoint a manager. If so satisfied the tribunal is required to make an order appointing a manager, to set out the functions required of him and to give him the necessary powers to fulfil those functions.
38. Once a tribunal is satisfied that the proposed manager has the necessary skills and expertise in relation to the functions to be undertaken, it is expected that the manager will get on with the job and fulfil his functions.
39. In our judgment it is not the function of the tribunal to micro manage the manager or to micro manage the subject premises. Of course the tribunal has limited powers under section 24(9) and (9A) to vary or discharge the order.
40. The evidence of Mr Strong was that having taken advice from an independent building surveyor the Phase 1 works should be undertaken as an urgent priority and his view was that those works could be delivered at a cost of about £55,000 inclusive of VAT and professional fees. This is equivalent to a contribution of £13,750 by each of the four Respondent lessees.
41. We have taken account of the representations made to us by Ms Wickramaratne who plainly has no confidence in Mr Strong and who believes that she could procure a lower specification of works at a lower cost and also the representations of Mrs Payne who is content with the specification but has concerns about the costs.

42. Given the history to the application before us and to the appointment of Mr Strong we have no confidence that the freeholders are yet capable of proper and effective management of the Premises. We find that Mr Strong has taken proper and appropriate professional advice as to the nature and scope of the works required and we respect his judgment of the scope of the Phase 1 works. It was not in dispute that Mr Strong had undertaken a competitive tender process for the works. This included a tender submitted by a nominee of one of the lessees, but it was not the least expensive tender. In these circumstances we are satisfied that it is appropriate for Mr Strong to take forward preparations for the Phase 1 works and that we should empower Mr Strong to impose a levy of £13,750 upon each lessee so that he is in funds to enable him to place a contract for the works.
43. We are pleased to note Mr Strong's assurance to the leaseholders that he is willing to look further at the scope of the first phase of the work and to consider the possibility of obtaining further tenders, showing his readiness to liaise informally with the leaseholders. The next stage of the process outlined to us by Mr Strong will give the Respondent lessees further opportunity to comment on the proposed works.

Service charge arrears

44. Mr Strong told us that three of the four Respondents were up to date with sums on account of routine service charges as at 24 March 2013. Evidently Mr Shields was not in arrears largely due to the fact that his mortgagee had effected a payment on his behalf. Mr Strong said that Ms Wickramaratne was in arrears to the sum of £2,565.00 as at 24 March 2013.
45. Mr Strong was of the view that if the arrears payable by Ms Wickramaratne were paid he would hold sufficient sums to be able to discharge his general management obligations. We have therefore empowered Mr Strong to impose a levy on Ms Wickramaratne in the sum of £2,565.00.

Enforcement powers

46. At the request of the parties the date for payment of the levies was deferred until 10 May 2013. This was to enable the parties to have a little time for one further round of discussions to see if a measure of agreement might be arrived at on some of the issues between them.
47. We wish the parties to understand that it would be unrealistic to expect a tribunal to discharge or vary further the Principal Order unless it was satisfied that the freeholders, together with Mr Shields, had freely and voluntarily entered into a clear and comprehensive understanding as to the future day to day management of the Premises and the execution of the necessary major works. In this respect we observe that during the course of the hearing Ms Wickramaratne was often adamant that

she and Mrs Payne were agreed upon a particular issue, matter or way forward and Mrs Payne was equally adamant that there was no such agreement consensus.

48. Mr Strong told us that as some of the Phase 1 works were external works he would want them to be carried out by the autumn at the latest. If the levies we have empowered Mr Strong to impose on the lessees are not paid he will need to take swift and effective action to enforce payment. In these circumstances and given the historic lack of cooperation of some of the lessees, we have authorised Mr Strong to take legal proceedings to enforce payment of the sums in question, should this be a necessary course.

Accounts and remuneration for professional fees

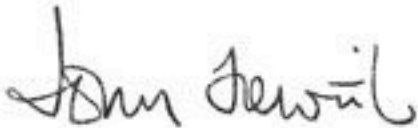
49. Mr Strong told us that he had issued an account in respect of his first year in office. The second year expired in February 2013 and an account was in the course of preparation.
50. Mr Strong sought an increase in his remuneration to reflect the additional work he has been required to undertake. He said that at the hearing at which he was appointed he had cited a fee on the footing that the bulk of his work would be routine management working with lessees taking a reasonable and cooperative approach. In practice that has not turned out to be the case. Mr Strong says he has been required to expend much more time than anticipated. Mr Strong had not quantified the further remuneration he was seeking. Further, although he hoped that going forward there might be less confrontation he could not be certain about what additional time and effort he may have to put in and he did not know whether it would be necessary for him to have to instruct solicitors to commence legal proceedings to enforce payment of the levies. Thus Mr Strong was not able to indicate what a reasonable level of remuneration might be going forward.
51. In these circumstances and following some discussion with the parties the tribunal considered that the question of remuneration should be deferred until Mr Strong was able to prepare his final accounts. If they were challenged by the lessees a hearing would be necessary to settle them and no doubt the issues concerns the legal costs could be dealt with at the same time.

Section 20C application

52. In her submissions Ms Wickramaratne intimated an application under section 20C Landlord and Tenant Act 1985 in respect of Mr Strong's costs of the proceedings.
53. Section 20C is expressly limited to the question whether costs of proceedings incurred by a landlord are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by a lessee. A number of points arise. The first is that

Mr Strong is not a landlord. The second is that any costs incurred by Mr Strong in his capacity as Manager are not service charges, as defined. In any event we find that it would be wholly unjust and unfair to deprive Mr Strong of the costs of these proceedings given that they were brought to clarify his powers and duties in the face of obstruction by some of the lessees. We also note that Mr Strong has sought to keep his costs to the minimum by bringing the application himself and appearing before us in person and that he not incurred costs with legal representation.

54. For the above reasons we decline to make any order under section 20C Landlord and Tenant Act 1985.



John Hewitt
Chairman
15 April 2013

Appendix 1

Additions to the Principal Order dated 24 February 2011

7. The Manager shall deal with the routine repair and maintenance issues affecting the property and shall procure and supervise the execution of such proposed major works of repair or redecoration as he shall consider necessary and appropriate in the interests of good estate management. In this connection the Manager shall place such instructions or contracts with advisers and/or contractors as he shall deem necessary.
8. The freeholders, that is to say, Mrs Payne, Mr Britto and Ms Wickramaratne shall procure that by no later than **5pm Friday 3 May 2013** Mr David Price of James E Fisher & Son hands over to the Manager all accounts, records, files and other documents, data and materials in his possession relating to the management and stewardship of the Premises.

The Manager shall no later than **5pm Friday 25 April 2013** deliver to the said Mr Price a copy of this decision under cover of a letter drawing the attention of Mr Price to this requirement.
9. The Manager is empowered to impose a levy on each of the Respondent lessees requiring that they shall pay to him by **5pm Friday 10 May 2013** the sums set out below:

	Flat A	Flat B	Flat C	Flat D
Major works:	£13,750	£13,750	£13,750	£13,750
Routine services:	-	£ 2,565	-	-
The legal costs:	£ 2,500	£ 2,500	£ 2,500	£ 2,500

10. The Manager is authorised to commence legal proceedings against all or any of the Respondent lessees to recover the above sums if they have not been paid to him by **5pm Friday 10 May 2013**. Any legal costs reasonably and properly incurred by the Manager and not recovered from an individual debtor in any such proceedings as may be issued shall be recoverable by him from the four Respondent lessees in equal proportions as if they were service charges payable by them.
11. The sum of £10,000 collected by the Manager in respect of the legal costs (as defined in the Decision above) shall be held by him pending further order of a leasehold valuation tribunal unless before any such further order is made all four Respondent lessees provide to him a written authority releasing those funds to him unconditionally.
12. The Manager shall be entitled to such further remuneration as a leasehold valuation tribunal shall determine.
13. The Manager shall by no later than **5pm Friday 10 May 2013** serve on the Respondent lessees an account of income and expenditure for the year ending 24 February 2013.
14. The Manager shall by no later than **5pm Friday 28 March 2014** serve on the Respondent lessees and file with the tribunal a brief written report on his stewardship of the Premises and his draft final account to include his proposals as to his remuneration. The report shall state whether or not the issue of the legal costs has been resolved. Upon receipt of the draft final accounts and the Manager's report further directions will be given to determine any issues which may then be extant between the parties.
15. In his capacity as Receiver the Manager shall be entitled to receive all sums whether held by the freeholders or their agents in relation to or in connection with the Premises, to include all and any outstanding ground rents and uncommitted service charges. All such sums received may be applied by the Manager in the performance of the landlord's obligations set out in leases.

16. The Manager shall be entitled to apply to the tribunal for such further directions as he may see fit.

Appendix 2

Landlord and Tenant Act 1987

24 Appointment of manager by a leasehold valuation tribunal

(1) A leasehold valuation 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) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely—

(a) where the tribunal is satisfied—

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

(ii) . . .

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

(ab) where the tribunal is satisfied—

- (i) that unreasonable service charges have been made, or are proposed or likely to be made, and

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

(aba) where the tribunal is satisfied—

- (i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and
- (ii) that it is just and convenient to make the order in all the circumstances of the case;]

(abb) where the tribunal is satisfied—

- (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and
- (ii) that it is just and convenient to make the order in all the circumstances of the case;

(NB: This subsection is not yet in force)

(ac) where the tribunal is satisfied—

- (i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and
- (ii) that it is just and convenient to make the order in all the circumstances of the case;

or

- (b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(2ZA) In this section "relevant person" means a person—

- (a) on whom a notice has been served under section 22, or
- (b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

- (a) if the amount is unreasonable having regard to the items for which it is payable,
- (b) if the items for which it is payable are of an unnecessarily high standard, or
- (c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4) An order under this section may make provision with respect to—

(a) such matters relating to the exercise by the manager of his functions under the order, and

(b) such incidental or ancillary matters,

as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, [the tribunal] may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide—

(a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;

(b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;

(c) for remuneration to be paid to the manager by [any relevant person], or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

(d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.

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

- (a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or
 - (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).
- (8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
- (9) A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.
- (9A) The tribunal shall not vary or discharge an order under subsection (9) on [the application of any relevant person] unless it is satisfied—
 - (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
 - (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.
- (10) An order made under this section shall not be discharged by a leasehold valuation tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.
- (11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.