FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AL/LSC/2020/0111** **LON/00AL/LAM/2018/0012**
HMCTS	**:**	**V: CVPREMOTE**
Property	**:**	**112 Blackheath Road, London, SE10 8DA**
Applicants	**:**	**Rebecca Maharaj (Flat B)** **Irene Lo Porto (Flat C)**
Representative	**:**	**In person**
Interested Party		**Nagwa Nasr (landlord)**
Representative		**Housam Nasra**
Respondent	**:**	**Richard Davidoff** **(Tribunal Appointed Manager)**
Representative	**:**	**In person**
Type of 1st application	**:**	**Liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Type of 2nd application		**Directions to the Manager under Part II of the Landlord and Tenant Act 1987**
Tribunal	**:**	**Judge Robert Latham** **Judge Amran Vance** **Ian Holdsworth FRICS**
Date and Venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR on 5 and 7 July 2021**
Date of Decision	**:**	**12 August 2021**

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

The Applicants have provided the Application Bundle which totals 957 pages, references to which will be prefixed by "A._"). The Respondent also referred the tribunal to his Statement of Case and three bundles of documents, references to which will be prefixed by "R1._" (294 pages); "R2._" (140 pages) and "R3._" (149 pages). Many of these documents are included in the Applicant's Bundle. During the course of the hearing, the Manager produced a number of additional documents which are summarised at [25] below, including a Bundle of Supporting Documents ("R4._").

Decision

Section 27A Application (LON/00AL/LSC/2020/0111)

1. The Tribunal makes the determinations as set out under paragraphs 89 to 107 in respect of the service charges in dispute.

2. The tribunal determines that the Respondent shall pay the Applicants £300 within 28 days of this decision, in respect of the reimbursement of the tribunal fees paid by the Applicants.

3. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

Directions to the Manager (LON/00AL/LAM/2018/0012)

Directions sought by the Applicants

4. The Tribunal directs the Respondent to forthwith repay the following sums to the Applicants in respect of the excess service charges which they have paid, namely (i) £11,844.32 to the First Applicant; and (ii) £12,196.92 to the Second Applicant.

Directions sought by the Respondent

5. The Tribunal authorises the Manager to issue proceedings against the Interested Party for the arrears arising under the Management Order. The Manager is personally responsible for any costs relating to such an action.

1. Introduction

1. There is a mistaken belief that if tenants have a rogue landlord who has neglected their flats for many years, all they need to do is to apply for a tribunal appointed manager pursuant to Part II of the Landlord and Tenant Act 1987 ("the 1987 Act") and their problems will be resolved. This application highlights the limitations of what can be achieved by such an appointment. The difficulties are the greater where, as here, the landlord/freeholder is liable to pay the majority of the service charges, namely 60% of external and 50% of internal charges.

2. The tribunal only appoints a manager as a last resort when it is apparent that this is just and convenient to ensure that a property is properly managed. The manager is appointed to oversee a scheme of management and acts independently of the parties and as an officer of the tribunal.

3. This case highlights the need for there to be clarity between the tribunal and the parties as to the outcomes which can realistically be achieved through the appointment of a manager. Where it becomes apparent that these outcomes are unobtainable, it is open to the manager to apply to the Tribunal for directions or for the management order to be varied or discharged. A management order requires the manager to make an annual report to the tribunal. This should alert the tribunal to any problems that have arisen and to any further directions that may be required.

4. Service charges paid by a tenant to the manager are subject to the provisions of sections 18-30 of the Landlord and Tenant Act 1985 ("the 1985 Act"). Any criticism of the conduct of the manager will be examined with care, because they are made against the manager in his capacity as an officer of the tribunal. A tribunal will be astute to the practical problems faced by a manager in carrying out such functions. However, a manager, as an officer of the tribunal, will be expected to observe high standards of conduct.

5. For a management order to succeed, there must be a relationship of trust and confidence between the manager and the tenants. This requires transparency by the manager. Where there is no adequate engagement or communication, there is a danger that this will sow the seeds of suspicion and mistrust.

6. On 3 January 2019, the Manager was appointed for a term of two years. The appointment started on 1 February 2019 and expired on 31 January 2021. The object of the order was for the Manager to execute a package of internal and external works which had been identified by Mr Martin Dobson FRICS. The Manager had produced a draft budget for the first year of £26,000, with major works estimated at £10,000.

7. On 11 June 2019, the tenants received their first service charge demands. These totalled more than £106,000, including £93,000 towards a reserve fund for future major works. The tenants, under

protest, paid some, but not all of these sums. The freeholder who was required to pay £59,614, has not paid one penny. She took the view that the sums demanded were "outright extortion"; she would not be "held to ransom" on her own property.

8. The relationship between the tenants and the Manager broke down irretrievably when they discovered that the company who had provided the lowest quote was owned by the wife of the person who had served the statutory Notice of Estimates.

9. On 31 January 2021, the management order expired. No one has applied to extend it. It is not open to a tribunal to vary an order once it has expired. Over the period of the management order, not one penny has been spent on any internal and external works of repair or maintenance. The Property has been insured. The fire alarm system has been checked.

10. During this period, Mrs Maharaj and Mrs Lo Porto have paid respectively service charge contributions of £13,768 and £14,190. The Manager contends that Mrs Maharaj is liable for £3,498 and Mrs Lo Porto £3,649. The tenants contend that these sums have not been reasonably incurred and challenge these through their Section 27A application. However, even on the Manager's case, they should be entitled to refunds of £10,270 and £10,541, a total of £20,811.

11. The tenants paid £23,284 into a reserve fund for the major works. Only £10,863 remains in that fund which the manager has held on trust for them. The Manager has drawn on this account to settle sums that should have been paid by the landlord. The tenants seek a direction under the Management Order that the sums held on trust for them should be repaid to them.

12. There is only one consolation from this sorry saga. The tenants and the landlord are now united in common cause against the tribunal appointed manager. The landlord is willing to place £10,000 in an escrow account towards the repairs which are necessary. The tenants seem confident that the landlord will now execute the repairs that are required within a period of six months. Whether their confidence is well-placed, only time will tell.

2. The Application

13. On 4 March 2020, Mrs Rebecca Maharaj, the First Applicant, issued an application seeking a determination under section 27A of the 1985 Act as to whether service charges are payable under the Management Order. The Respondent to this application is Mr Richard Davidoff whom the tribunal appointed as Manager of 112 Blackheath Road, London, SE10 8DA ("the Property") pursuant to section 24 of the 1987 Act.

14. The application was stayed as a result of Covid-19. On 31 January 2021, the Management Order expired. On 18 March 2021, the First Applicant issued an amended application.

15. On 6 April 2021, Judge Latham held an oral case management hearing (by video). The following attended the hearing: Mrs Maharaj, Mrs Lo Porto, Mr Housam Nasr, Mr Davidoff and Mrs Birikorang, a property manager at Aldermartin Baines & Cuthbert. The Tribunal directed that Mrs Maharaj's amended application should stand as her statement of case. Mrs Lo Porto applied to be joined as an applicant. The tribunal has acceded to this request.

16. Mr Housam Nasr appeared for his aunt, Mrs Nagwa Nasr. Mrs Nasr's first language is Arabic and she has a limited understanding of English. She is the freehold owner of the Property. She granted the leases in respect of Flats B and C, but retains Flats A and D ("the other flats") which are occupied under short term lets. There are commercial premises on the ground floor. Mr Nasr works for IDM, a company set up to manage the family's property portfolio. Mrs Nasr has filed a statement confirming that Mr Nasr has authority to act for her. Mr Nasr applied for his aunt to be made an interested party to this application. The Tribunal acceded to this request.

17. The Judge noted that whilst application LON/00AL/LSC/2020/0111 had been issued pursuant to Section 27A of the Act, the tribunal retained jurisdiction to give directions to the Manager in relation to the discharge of his duties under the Management Order which had been made in LON/00AL/LAM/2018/0012. However, the tribunal had no jurisdiction to vary the Management Order. The Judge directed the parties to specify any directions which they sought from the tribunal.

18. The Tribunal made Directions, pursuant to which:

    (i) On 4 May, Mr Davidoff served his Statement of Case and three bundles of documents. He did not serve any witness statements. Neither did he specify any directions which he sought from the tribunal. He disclosed an Expenditure Report from 2019 to date (the "Expenditure Report") (at A.937). He also provided copies of his annual reports to the tribunal, namely for 2019 and 2020 (at A.899 and A.901). He had been directed to include all documents in support of the sums demanded. The Management Order had expired on 31 January 2021. Judge Latham had directed that the bundle should include the final accounts in respect of the Management Order. These were not provided.

    (ii) On 25 May, the Applicants filed the material on which they sought to rely. This includes: (a) an amended application form (at A.3); (b) a Scott Schedule which identifies the sums in the Expenditure Report which they challenge (at A.134); (c) their Statement of Case (A.117); and (d) a witness statement from Mrs Lo Porto (at A.125). The Applicants seek a direction that the Manager repays the sums due to the them.

(iii) On 25 May, Mrs Nasr, the Interested Party, filed the material on which she seeks to rely (at A.410-465. This includes a witness statement from Mr Housam Nasr (at A.413). Mrs Nasr does not seek any directions from the tribunal.

(iv) On 8 June, Mr Davidoff filed Replies to the Statements of Case filed by the Applicants (at A.466) and by the Interested Party (at A.474).

(v) On 18 June, the Applicants filed the Bundle of Documents (at A.1-A.957).

3. The Hearing

19. The following attended the hearing on 5 and 7 July 2021: Mrs Maharaj, Mrs Lo Porto, Mr Nasr, Mr Davidoff and Mrs Birikorang. All the parties represented themselves. Mrs Maharaj took the lead on behalf of the Applicants.

3.1 Issues to be Determined

20. At the beginning of the hearing, the Tribunal clarified the issues which we are required to determine in LON/00AL/LSC/2020/0111. It was agreed that the Applicants should be granted permission to rely on their re-amended application form (at A.3) and the Scott Schedule (at p.134). This Schedule includes service charge items for which the tenants have not yet been charged. It is based on the Expenditure Report (at A.937). Mr Davidoff stated that this includes all the sums that he would seek to recover under the Management Order, save for a final bill of £720 which the accountants will charge for the final accounts which are not yet available. The Tribunal is willing to give Mr Davidoff permission to add this item so that there can be finality to his Management Order.

21. In their Statement of Case, the Applicants seek a direction in LON/00AL/LSC/2020/0111, that the Manager repays the sums they say are due to them. At the hearing, Mr Davidoff made a written application for the following directions:

(i) Authority to charge a handover fee of £600. This sum has already been included in the Expenditure Report and Mr Davidoff has paid himself for this from the reserve fund.

(ii) Recovery of the Manager's costs in respect of this application against Mrs Nasr. By a letter dated 7 July 2021, the Manager quantifies his costs at £9,360. He states that as a "gesture of goodwill" he has only billed for 50% of the time spent on the preparation work.

(iii) Authority for the Manager to be able to sue Mrs Nasr in respect of the arrears of service charges payable pursuant to the Management Order. The sums sought are based the Expenditure Report.

All the parties were anxious that the Management Order, which expired on 31 January 2021, should be brought to an end to facilitate the effective management of the property which has now reverted to Mrs Nasr. The Tribunal therefore acceded to the request to deal with all these issues.

3.2 Evidence

22. The Tribunal heard evidence form the following:

(i) Mrs Rebecca Maharaj, the First Applicant. She is a trainee cognitive behaviour therapist who works with children. She is the lessee of Flat B pursuant to lease dated 21 January 2001. The lease was granted for a term of 99 years, but she has secured a 90 year statutory lease extension. This is a one bedroom flat on the first floor. Mrs Maharaj acquired her leasehold interest in 2016 for £225k. She is concerned that so little was achieved during the period of the Management Order. When the Tribunal made the Management Order, it was concerned that Mr Davidoff's costs were higher than the usual charges for this type of work. The costs now demanded are outside the range of what was contemplated when the Management Order was made. Mr Davidoff was directed to implement the package of works proposed by Mr Dobson. He rather sought to implement a schedule of works of an entirely different order. She stated that Mr Davidoff had mismanaged the property. She had paid money into the reserve fund in good faith. She had no contemplation that this would be used to discharge sums owed by the landlord. She is also concerned about the conflicts of interest that the Applicants believe have arisen in this case between Mr Davidoff and (a) ABC Block Management; (b) Valens Ltd; and (c) other companies with which Mr Davidoff has financial interests.

(ii) Mrs Irene Lo Porto, the Second Applicant. She is employed as a revenue manager for a hotel. She is the lessee of Flat C. This is a two bedroom flat on the second floor. Mrs Lo Porto acquired her leasehold interest in 2008 for £194k. She adopted the position taken by Mrs Maharaj. She had taken the initiative in applying for the original Management Order. She has assisted Mrs Maharaj with the current application and has prepared the Bundle of Documents.

(iii) Mr Richard Davidoff, the Respondent. The Management Order (at A.103) appointed Mr Davidoff "of ABC Block Management Limited ("ABC") as Manager". In his Management Plan presented to the tribunal on 3 December 2018, Mr Davidoff had described himself as "Director, ABC Block Management Limited". He described how the firm manages just over 150 buildings and estates and has 16 members of staff in the Block Management Department. In his evidence, he stated that he is rather the "managing director" and not a director. The Applicants had discovered that the sole director is Tamara Davidoff, his daughter. The majority shareholder is Raziel Davidoff, which the Applicants say is an alias for Richard Davidoff. Mr Davidoff stated that he uses some 20 to 30 companies, some of which are not active. The

Tribunal did not find Mr Davidoff to be a satisfactory witness. He seemed to have limited knowledge of the detail of the case, and constantly referred to Mrs Birikorang to answer questions about the management of the property. Few of his reports are dated, which made it difficult to analyse the sequence of events. His position was that the Management Order gave him complete discretion as to how he managed the property. His duty to engage with the tenants was limited to that required by the 1985 Act. In his closing submissions, he stated that he had concluded that the tenants had never wanted to spend any money on the property from the outset. We reject this suggestion for which there is no foundation. However, this is indicative of the dismissive attitude which he has adopted towards the tenants.

(iv) Mr Housam Nasr. He works as a Lettings Negotiator for the family business, IDM Enterprises ("IDM"), with his uncle, Mr Ibrahim Nasr who is the landlord's brother. He suggested that the business practices of both Mr Davidoff and ABC were extremely questionable and that they had sought to inflate costs for their own financial gain. Mr Nasr was unable to explain why the landlord had not paid anything towards the service charges which had been demanded, not even for insurance. He suggested that only £2,889.50 was due. We were told that Mr Ibrahim Nasr had contracted Covid and had been in intensive care for some 6 weeks in the middle of 2020. However, this cannot justify the failure of the landlord to pay anything towards the costs of maintaining her property. The Interested Party has played a limited part in these proceedings. She has not filed any case disputing the sums demanded. These have not been demanded as "service charges", but rather pursuant to her liability under the Management Order as landlord/freeholder, in respect of the commercial premises and the two flats which she has retained.

23. At the end of his evidence, Mr Davidoff applied to call Mrs Birikorang to give evidence. She had not supplied a witness statement. When asked why he wished to call her, Mr Davidoff responded that he wanted to ask her if there was anything that she would wish to add. The Tribunal declined to allow Mr Davidoff to do so. The other parties were entitled to know the substance of the evidence that she would give prior to the hearing. This should have been in a witness statement. They would have been unduly prejudiced had they been confronted by evidence to which they had had no opportunity to respond.

24. The Applicants asked the Tribunal to have regard to the witness statement of Jesus Rodriguez who has had contact with Mr Davidoff and ABC at the property where he lives. His evidence was disputed and he was not available to be cross-examined. The Tribunal indicated that we were not minded to have regard to this evidence. The Applicants have included a number of First-tier Tribunal decisions involving Mr Davidoff in the Bundle. They did not cross examine Mr Davidoff about these. The Tribunal is satisfied that we should determine this case on the evidence adduced before us. A number of serious allegations have

been raised. We only address these in so far as they are relevant to the issues which we are required to determine.

25. During the course of the hearing, Mr Davidoff adduced a number of additional documents. He referred us to his Statement of Case and three bundles which he has served on 4 May 2021. He stated that a number of these documents had not been included in the Applicant's Bundle. During the hearing, the Tribunal asked him to identify which documents had not been included. He failed to do so. The additional documents produced included: (i) a Bundle of Supporting Documents; (ii) the Reserve Fund Bank Statement; (iii) the Service Charge Bank Statement; (iv) The Brief Condition & Management Plan which Mr Davidoff had submitted to the tribunal in 2019; and (v) a letter, dated 7 July 2021, in which Mr Davidoff seeks costs against Interested Party in sum of £9,360.

4. The Leases

26. The Tribunal has been provided with the leases for Flat B (at A.48) and Flat C (at A.29). Flat B is a one bedroom flat on the first floor. Flat B is a two bedroom flat on the second floor.

27. The landlord covenants to: (i) insure the Property; (ii) repair and maintain the structure and exterior (excluding windows); (ii) decorate the exterior; and (iv) light the common parts. The tenants covenant to contribute to the landlord's expenses of maintaining, and decorating the common parts.

28. There is some ambiguity as to f the service charge contributions. However, the parties were agreed that each flat contributes 20% of the external costs, whilst Flat B contribute 30% and Flat C 20% towards the cost of the internal costs. The leases require the tenants to pay advance service charge in two six monthly instalments, with a reconciliation at the end of the financial year. There is no provision for a reserve fund.

5. The Law

29. Provision is made for the appointment of a manager by Part II of the Landlord and Tenant Act 1987 ("the 1987 Act"). Any application to extend the period of the appointment under section 24(9) must be made before the end of the fixed period (see *Eaglesham Properties Ltd v Jeffrey* [2012] UKUT 157 (LC). If the period ends without such an application having been made, the management reverts to the landlord. However, a tribunal may give directions to a manager under section 24(4) after the expiry of his appointment.

30. The status of a tribunal appointed manager was recently considered by Martin Rodger QC, the Deputy President, in *Suchorski v Norton* [2021] UKUT 166 (LC):

> "5. In *Maunder Taylor v Blaquiere* [2002] EWCA Civ 1633, the Court of Appeal explained that a manager appointed by a court or tribunal under section 24, 1987 Act is not the manager of the landlord's business, or the manager of the landlord's obligations under the lease. The manager is a court or tribunal-appointed official, whose responsibility is to carry out the duties required by the order appointing them. The manager answers to the court or tribunal which appointed them.
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> 6. Sums payable by leaseholders to a tribunal-appointed manager as contributions towards the cost of services, are service charges within the meaning of section 18(1), Landlord and Tenant Act 1985. As the Court of Appeal has recently confirmed in *Chuan-Hui v K Group Holdings Inc* [2021] EWCA Civ 403, it follows that the statutory protections afforded to leaseholders by the Landlord and Tenant Act 1985 apply to such payments.
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> 7. It also follows that the additional statutory protections provided by section 42, 1987 Act apply to service charges paid by leaseholders to a tribunal-appointed manager. Section 42 requires the landlord or other person to whom service charges are paid to hold any money they receive on trust to defray the costs incurred in connection with the matters for which the relevant service charges were paid, and otherwise on trust for the contributing leaseholders for the time being.
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> 8. In *Kol v Bowring* [2015] UKUT 530 (LC) the Tribunal (HHJ Gerald) confirmed that the tribunal which appointed a manager has power to require the manager to provide a final account of their receipts and expenditure at the termination of their appointment, and to direct that any surplus be paid to the leaseholders."

31. In *Kol v Browning*, HHJ Gerald made the following observations:

> "37. The F-tT has power to determine all matters relating to the discharge by the tribunal appointed receiver-manager of his or her functions including, but not limited, to the provision of all, including final, accounts and the payment of any surplus. More generally the F-tT when making a management order under section 24 of the 1987 Act should consider and approach the matter in a simple, straightforward and practical way especially where relatively modest sums are involved so that it is clear precisely that which the receiver-manager must do and by when and also the ability for any elements to be challenged within a specific framework and timetable."
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> "25. Once all matters relating to the service charge and monies raised during the period of the tribunal-appointed manager have been determined, the matter will need to be wound up or

concluded by an order stating to whom the monies should be paid. In the ordinary course of things those monies will be reimbursed to the paying parties, usually the tenant, and not transferred to whoever takes over from the manager or receiver. This is because, as *Maunder Taylor* makes clear, monies paid to the manager are by dint of statutory and tribunal authority and are not paid as service charge under the terms of the lease in the strict and very narrow sense of how that is understood."

32. Whilst, the service charge payments made by a tenant to a manager are subject to the provisions of sections 18-30 of the 1985 Act, different principles apply where a landlord is required to pay sums under a management order in respect of residential flats or commercial premises retained by the landlord. These cannot qualify as service charges, as they are not payable be a tenant (see *Chuan-Hui v K Group Holdings Inc*, per Henderson LJ at [57]).

33. Section 42 of the 1987 Act imposes a statutory trust in respect of all payments made by tenants of dwellings towards service charges. The operative provision establishing the trust is section 42(3), which states [with emphasis added]:

"The payee shall hold any trust fund:

(a) on trust to defray costs incurred in connection with the matters for which the relevant service charges were payable (whether incurred by himself or by any other person), and

(b) subject to that, on trust for the persons who are the contributing tenants <u>for the time being</u>, or the person who is the sole contributing tenant <u>for the time being.</u>"

34. Mr Davidoff referred the tribunal to *Solitaire Property Management Co Ltd v Holden* [2012] UKUT 86 (LC) in support of his suggestion that the tribunal had no jurisdiction to embark on an inquiry as to how such trust funds have been handled. This decision has now been revisited by the Deputy President in *Eshraghi v 7/9 Avenue Road (London House) Ltd* [2020] UKUT 208 (LC) and in *Suchorski v Norton* (above).

6. The Background

35. The Property at 112 Blackheath Road is a Victorian terraced property on three floors. On 31 October 1991, Karl Katz granted a lease (at A.68) of the commercial premises on the ground floor of Nos. 112 and 114 Blackheath Road. On 13 October 2000, Mrs Nasr granted the lease of Flat 112B (at A.48) which is one bedroom flat on the first floor. On 24 January 2001, Mrs Nasr granted a lease of Flat 112C (at A.29) which is a two bedroom flat on the second floor. Mrs Nasr has retained flats A and D which are let under short tenancies. In 2008, Mrs Lo Porto acquired the leasehold interest in Flat C. In 2016, Mrs Maharaj acquired the leasehold interest in Flat B. The Tenants complain of a history of neglect by their landlord.

7. The Application for the Appointment of a Manager

36. On 28 July 2018, Mrs Lo Porto served a preliminary notice pursuant to section 22 of the Act. Mrs Nasr was given 6 weeks to remedy the defects specified in the notice. She failed to do so. On 12 September 2018, Mrs Lo Porto applied to this tribunal to appoint Mr Davidoff as Manager for a period of five years. On 27 September, Mrs Maharaj was joined as an applicant.

37. On 3 December 2018, a Tribunal (Judge Dutton, Mr Lewicki FRICS and Mrs Hawkins) heard the application. The Applicants appeared in person, accompanied by Mr Davidoff. Ms Nasr as represented by Ms Amanada Gourlay (Counsel) who adduced evidence from Mr Ibrahim Nasr.

38. Mr Davidoff produced a "Brief Condition Report and Management Plan". This included a proposed service charge budget for year 1 which totalled £25,805. Major works were estimated at £10,000 with general repairs and maintenance estimated at £2,000 and a reserve fund contribution of £1,000. Mr Davidoff had only had the opportunity to inspect the front elevation, the common parts and Flat C.

39. By this date, Mrs Nasr had addressed a number of the defects specified in the Section 22 notice. Mrs Nasr had also obtained a number of reports including and asbestos report. a fire risk assessment, an electrical report and the report from Mr Dobson, dated 6 November 2018, (at A.418-449). On 30 November, Middleton Town and Build had provided an estimate in the sum of £6,610 for a basic package of internal and external repairs and decorations (at p.450-2). IDM was now a member of the Property Redress Scheme. Mrs Nasr's case was that no management order was now required and that she intended to proceed with the works proposed by Mr Dobson. Mr Dobson considered that Mr Davidoff's budget was excessive. He concluded (at [6.11]) that a budget of £15,000 + VAT for 2018/9 would be "far more reasonable and equitable" and that consultation with the lessees should be undertaken once quotations have been obtained and the various options considered.

40. In their decision, dated 3 January 2019 (at R1.1), the Tribunal concluded that it was just and convenient to appoint Mr Davidoff as Manager, but only for a period of two years, rather than the five years proposed by Mr Davidoff. The Tribunal considered that some of the works proposed by Mr Davidoff were unnecessary, for example a CCTV survey of the drains. The Tribunal noted that Mr Davidoff's evidence had been delivered "in a somewhat arrogant manner". He would need to reflect on this as "some harmony and good working relationship" with Mrs Nasr was essential to his appointment. Mr Davidoff confirmed that he would follow the recommendations of Mr Dobson with whom he hoped that he could work. A period of two years would enable the Property to be put into proper order and to give both IDM and Mrs Nasr time to come to grips with their management

responsibilities. The Tribunal noted that Housam Nasr (referred to as Hassan) had a law degree and had recently enrolled on a leasehold management course.

8. The Management Order

41. Mr Davidoff, as Manager appointed by the Tribunal, was required to carry out the duties specified in the Management Order (at A.103-114). The Tribunal appointed Mr Davidoff in his capacity as director of ABC Block Management Limited ("ABC"). However, the Order permitted Mr Davidoff to delegate to other employees of ABC. The Order commenced on 1 February 2019 and expired on 31 January 2021.

42. By Paragraph 1, the Manager was "given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of the Respondent (Mrs Nasr)". Fourteen particular functions are specified at (a) to (n) which include (emphasis added):

    (i) "to receive all future service charges, interest and any other monies payable under the Leases and by the other flats and any arrears due" (Paragraph 1(a)). The decision had confirmed that Flat B (Mrs Maharaj) would contribute 20% to both the internal and external works, whilst Flat C (Mrs Lo Porto) would contribute 30% to internal and 20% to the external works. Mrs Nasr would contribute 50% to the internal works and 60% of the external works in respect of the contribution due from Flats A and D and the commercial premises.

    (ii) The financial year should run from 1 January to 31 December ([1(b)]).

    (iii) "It is intended that the report of Mr Dobson dated 6th November 2018 should form the basis of future works of repair" (Paragraph 1(d)).

    (iv) The power for the manager to bring proceedings against both the lessees and against Mrs Nasr in respect of her liabilities in respect of Flats B and C and the commercial premises. The Order made specific provision that "the Manager shall be entitled to an indemnity for both his own costs reasonably incurred and for any adverse costs order out of the service charge account" (Paragraph 1(f) and (g)).

    (v) The power to raise a reserve fund (Paragraph 1(m)). The Order made specific reference to section 42 of the 1987 and provided: "the Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the lease (if any) or to power given to him by this Order) and all other monies received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund (Paragraph 1(i)).

(vi) “The power to borrow all sums reasonably required by the Manager for the performance of his functions and duties, and the exercise of his powers under this Order in the event of there being any arrears, or other shortfalls, of service charge contributions due from the Lessees or any sums due from the Respondent, such borrowing to be secured (if necessary) on the interests of the defaulting party (i.e., on the leasehold interest of any Lessee, and the freehold of the Building in respect of the Respondent (Mrs Nasr))” (Paragraph 1(k)).

43. Paragraph 2, specified that “the Manager shall manage the Premises in accordance with:

(a) the Directions of the Tribunal and the Schedule of Functions and Services attached to this Order;

(b) the respective obligations of all parties - landlord and tenant - under the Leases and in particular with regard to repair, decoration, provision of services and insurance of the Premises/Building; and

(c) the duties of managers set out in the Service Charge Residential Management Code (the "Code") or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to S.87 of the Leasehold Reform, Housing and Urban Development.”

44. The remuneration to which the Manager is entitled is set out in the Schedule “Functions and Services”:

“16. Fees for the above-mentioned management services (with the exception of supervision of major works) shall be a fixed management fee of £1,875 per annum plus VAT at the pertaining rate payable quarterly (payable as to £375 + VAT per flat and including the shop) for the Premises for the period of the Order. In addition, there shall be a one-off set up charge of £500, to be met from the interim payment referred to in the Order at paragraph 1(n) above.

19. In addition to the above there shall be a charge in respect of major Works of 5% plus VAT on the estimated costs of any such works plus any reasonable disbursements, (including the preparation of all consultation notices under S20 of the landlord and Tenant Act 1985).”

45. Paragraphs 16 and 17 relate to charges which fall outside these normal management duties and relate to solicitor’s enquiries on transfer and fees for various licences. These are not relevant to the current application.

46. Paragraph 1(n) permitted the Manager “to forthwith demand from each lessee and the Respondent as owner of the other flats the sum of £500 for each flat on account of service charges for the year commencing January 2019 and such payments to be in addition to any demands made in respect of qualifying works or long-term agreements as provided for under the provisions of S20 of the Landlord and Tenant Act.”

47. The following provisions are relevant to the Tribunal's determination:

(i) "The Manager shall act fairly and impartially in his dealings in respect of the Premises and the Building" (Paragraph 8]).

(ii) "Provide a written report to the Tribunal at the end of each financial year, the first being at the end of the period 31st December 2019 to confirm what progress has been made, including an update on the financial status of the management company any further powers that the Manager may require" (Paragraph 5 of the Schedule). Mr Davidoff has provided two undated written reports for the tribunal, apparently on 27 December 2019 for the years 2019 (at A.899) and on 30 December 2020 for 2020 (at A.901).

(iii) "Henceforth during the continuance of the Order the production of a certificate (the Certificate) from a qualified accountant shall be sufficient to meet any requirements contained in the Leases. Upon the Certificate being obtained which shows any over or underpayment of service charge contributions made under the provisions of clause i(n) of the Order above, then such underpayment shall be recoverable as a debt and any surplus will be credited to the service charge account of the lessee for the next financial year or at the reasonable discretion of the Manager credited to that lessees contribution to any reserve fund that the Manager has created, to be held in accordance with the Law" (Paragraph 21 of the Schedule). The Order requires the Manager to account for the sums due from and the sums paid by each lessee and the landlord. The Order does not contemplate that the Manager can use any surplus paid by one party to offset any debt owed by another.

(iv) "At the end of the Order it shall be the Manager's responsibility to provide final accounts and to account for monies that may be held. For the avoidance of doubt such responsibility continues beyond the period of the Order and continues until it has been fully discharged" (Paragraph 22 of the Schedule). Mr Davidoff has not yet provided the final accounts.

48. Paragraph 11 of the Order provided:

> "The Manager may apply to the First-Tier Tribunal (Property Chamber) for further directions in accordance with 3.24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:
>
> a. Any failure by any party to comply with an obligation imposed by this Order;
>
> b. For directions generally;
>
> c. Directions in the event that there are insufficient sums held by them to discharge their obligations under this Order and/or to pay their remuneration."

Mr Davidoff has not applied for any Directions even though Mrs Nasr has not made any contribution towards the sums payable by her under the

Order. In the absence of such payments, there has been no prospect that Mr Davidoff would be able to execute the schedule of works contemplated by Mr Dobson.

9. The RICS Management Code

49. The Tribunal directed the Manager to have regard to the relevant provisions in the Service Charge Residential Management Code. A copy of the 3rd Edition of the RICS Code is at p.515 of the Bundle. The Tribunal referred to three sections of the Code:

(i) Section 7.5 "Reserve Funds": Mr Davidoff suggested that there was a difference between a "reserve fund" and a "sinking fund", the former giving a manager much greater discretion as to how the funds are utilised. The guidance rather suggests that the two terms are interchangeable.

(ii) Section 7.6: "Holding Reserve Funds in Trust": The following guidance is given:

> "You must hold service charge monies, and any interest accruing, by way of statutory trusts in accounts established in accordance with section 42 of the Landlord and Tenant Act 1987. Service charge payments must be kept separate from the landlord and managing agent's own money and must only be used to meet the expenses for which they have been collected."

(iii) Section 10.1 "Contractors and Suppliers": The following guidance is given:

> "Where you have a connection with any proposed company, individual, contractor or supplier, whether financial or otherwise, this should be declared to your client and the leaseholders as a note with the year end service charge accounts. The statutory consultation requirements (s.20 Landlord and Tenant Act 1985) also require any connections to be identified)."

This is particularly important for a tribunal appointed manager who is an officer of the Tribunal.

10. Events since the Management Order was made

50. The Tribunal's decision is dated 3 January 2019. The Management Order commenced on 1 February for a period of two years. On 15 January, Ms Birikorang, on behalf of the Manager, emailed Mr Dobson (at A.508) asking him to prepare two specifications of work, one for the internal and a second for the external works. She asked him how much each specification would cost. On 16 January (at A.509), Mr Dobson responded stating that he had reviewed the Company's current commitments and had decided that they were unable to take on this project.

51. On 28 January 2019 (at A.896), Mr Davidoff sent a welcome letter to the tenants. He stated that ABC had been instructed to commence the

management of the building. The Tribunal had rather appointed Mr Davidoff to manage the Property. The letter referred to four staff members with whom they would have contact: Mark Reed (Head of Block Management); Jennier Birlkorang (Senior Property Manager); Ravi Popat (Accounts Manager) and Muki Motiwala (Assistant Property Manager). The letter gave details of the relevant "service charge" and "reserve" accounts. Mr Davidoff did not alert them to the fact that Mr Dobson had withdrawn from the project.

52. Paragraph 1(n) of the Management Order permitted the Manager to forthwith demand £500 from each of the Applicants and £1,000 from Mrs Nasr on account for the service charge year commencing January 2019. Mr Davidoff did not exercise this power which would have raised £2,000 for the service charge account. It is unfortunate that he did not do so, as this with have been a litmus test as to how the parties would respond to the Management Order. We have no doubt that the two Applicants would have paid their contributions. We are less certain about Mrs Nasr. Had she failed to do pay, it would have been an early warning of the difficulties that the Manager would face.

53. On 1 February 2019 (at A.488-507), Mr Davidoff (as the "Client") signed an agreement with ABC (the "Manager") appointing ABC as managing agent of the Property at a management fee set out in Appendix 1. A second similar agreement, dated 31 January 2020, is at A.938-57.

54. In his Statement of Case, Mr Davidoff asserts that Paragraph 1(h) of the Management Order permitted him to enter any contract at his discretion, even if this was with his own management company. He uses this agreement to justify the following:

    (i) A charge of £300 pa for an Out of Hours Helpline (at Appendix 3). No such fee was specified in the Management Order. The tenants did not require such a service and made no use of it.

    (ii) A 10% supervision fee in respect of major works. A reduced fee of 7.5% may be charged if a project is aborted after tenders have been obtained (Appendix 5). The Management Order had specified a fee of 5% for the supervision of major works. There is no provision for an abortive fee.

    (iii) A handover fee of £500 + VAT at the end of the management arrangement (Clause 12). No such fee was specified in the Management Order.

55. In his Statement of Case, Mr Davidoff expressly relies on the following clause in the agreement with ABC to justify his conduct in drawing on funds held on trust for the Applicants in a reserve fund in order to discharge arrears owed by the landlord:

    "The Client authorises the Manager to deduct the Management Fee from the Client account and any additional charges when billed. Where the Client does not have sufficient funds in their client account for

payment to be made to the Manager on the charging date then the Manager may, at its discretion, transfer funds from any reserve fund accounts held or if there are still insufficient funds grant a loan to the client for a similar amount to be repaid as and when the Client account has sufficient funds."

56. The Tribunal had appointed Mr Davidoff as Manager and the Management Order had specified the fees to which he is entitled and the manner in which he was to account for the service charge funds. The Tribunal is satisfied that it is not open to a tribunal appointed manager to subvert the express terms of a Management Order in the manner that these agreements purport to do. The Manager is limited to those fees payable under the Management Order.

57. On 14 February 2019 (at p.510), Mr Davidoff wrote to the Tribunal to inform it that Mr Dobson had declined to accept instructions and seeking permission to instruct either Paul McCarthy of McCarthy Partnership or Andrew Mazin of AMA Associates in his place. Both were described as "independent arm's length MRICS Chartered Building Surveyors". This letter was not copied to the Applicants. On 25 February, the tribunal notified Mr Davidoff that Judge Dutton had agreed to the request to instruct either of the surveyors. The tribunal did not copy the response to the Applicants. At this stage, the significance of this variation would not have been apparent.

58. On 4 March 2019, Ms Birikorang sent a copy of Mr Dobson's report to both Mr McCarthy and Mr Mazin requesting separate specifications in respect of the internal and external works. Mr Davidoff did not explain to the Tribunal why he had sought separate specifications. The Management Order had contemplated a modest package of internal and external repairs and decorations which were to be completed within the two years of the Management Order.

59. On 5 March 2019, Mr Mazin (at R1.106) quoted a figure of £2,000 + VAT for both specifications. On 4 March, Mr McCarthy quoted £900 + VAT for each specification. The Manager instructed Mr McCarthy. In March 2019, Mr McCarthy produced two specifications of works. The Tribunal has received no evidence from Mr McCarthy. However, it is apparent that the works specified were much more extensive than those contemplated by Mr Dobson. The Tribunal would have expected Mr Davidoff to have made some inquiries as to the likely cost of the works to enable him to assess whether these fell within the scope contemplated in the Management Order. There is no evidence that he did so.

60. On 10 April 2019, Mr Reed, on behalf of ABC, served two Stage 1 Notices of Intent on the tenants in respect of (i) internal repairs and decorations (at A.724-5) and (ii) external repairs and decorations (at p.616-70). Mr Davidoff gave no explanation as to why two separate notices had been served. The works were described in these terms:

"It is proposed to redecorate and re-carpet and carry out any necessary ancillary repairs to the internal parts of the buildings as per the surveyor's specifications of works."

"It is proposed to redecorate and carry out any necessary ancillary repairs to the external elevations of the building. These works will include works to the roofs, drains, gutters, downpipes, window repairs, joinery repairs, pointing, flashing and render repairs and other works as per the surveyor's specification of works. These works may necessitate full scaffolding to the property."

61. Mr Reed did not inform the tenants that Mr Dobson was no longer engaged and that a much more extensive schedule of works had now been prepared by Mr McCarthy. There was a reference to "the surveyor's specification of works". The tenants assumed that this was the schedule contemplated by Mr Dobson. The tenants were invited to nominate a contractor from whom a tender might be sought. At the hearing before us, Mrs Maharaj and Mrs Lo Porto stated that they did not consider that there was any need to do so. They contemplated that a modest package of works would be executed as contemplated in the Management Order. This had been premised on a Year 1 budget from Mr Davidoff of £25,805. We accept their evidence.

62. Any complacency on the party of the tenants was shattered by a series of communications which they received, dated 11 and 12 June 2019:

(i) On 11 June, ABC issued a total of eleven service charge demands totalling £106,573.90; Mrs Maharaj was required to pay a total of £21,314.80, Mrs Lo Porto £25,645.40 and Mrs Nasr £59,613.70.

(ii) On 12 June, Mr Reed, on behalf of ABC, served two Stage 2 Notices of Estimates: (i) Two estimates had been obtained for the external works (at A.621-3): CJAP Ltd had quoted £49,752 (inc VAT) and H&C Ltd £53,460. (ii) Two estimates had been obtained for the internal works (at A.729-31): CJAP Ltd had quoted £34,260 and H&C Ltd £35,800. ABC were minded to accept the tenders from CJAP Ltd. ABC would charge a supervision fee of 10%. No explanation was provided as to why these estimates were so much higher than had been specified in the Management Order or as to why separate tenders had been sought for the internal or external works. There was no suggestion that the Manager might need to discuss with the tenants whether they could afford works of this magnitude or whether the extent of these works now fell outside the scope of the Management Order.

63. The manner in which these service charge demands was issued was far from satisfactory. No covering letter accompanied these demands. No service charge budget was included. No explanation was provided to justify the sums demanded. In Mr Davidoff's Third Bundle (R3), the service charge demands are spread over 81 pages. They are not in chronological order and the presentation seems intended to confuse, rather than enlighten:

(i) Mrs Maharaj received three demands: (a) an annual service charge in advance of for 2019 of £2,632.00 (at R3.30); (b) reserve fund contributions in advance of £7,637.20 for internal works and £11,045.60 for external works (at R3.18); and (c) a second demand for a reserve fund contribution of £11,045.60 for external works (at R3.21).

(ii) Mrs Lo Porto received two demands: (a) an annual service charge in advance of for 2019 of £3,144.00 (at R3.49); and (b) reserve fund contributions in advance of £11,455.80 for internal works and £11,045.60 for external works (at R3.40).

(iii) Mrs Nasr received a total of 6 demands issued separately in respect of Flat A (at R3.8 and R3.2); Flat D (at R3.62 and R3.56); and the Ground Floor Shop (at R3.75 and R3.72). These totalled £59,613. There are no separate leases in respect of Flat A and Flat D. The Management Order rather recognised that Mrs Nasr would be liable for 50% of the cost of internal works and 60% of the cost of internal works.

64. The Tribunal has prepared the following Table which summarises the sums which were demanded:

		Service Charge 2019	Reserve Fund (Internal)	Reserve Fund (External)	Total
Flat B	Mrs Maharaj	£2,632.00	£7,637.20	£11,045.60	£21,314.80
Flat C	Mrs Lo Porto	£3,144.00	£11,455.80	£11,045.60	£25,645.40
Flat A	Mrs Nasr	£2,888.00	£9,546.45	£11,045.60	£23,480.05
Flat D	Mrs Nasr	£2,888.00	£9,546.45	£11,045.60	£23,480.05
Shop	Mrs Nasr	£1,608.00	-	£11,045.60	£12,653.60
	Total:	£13,160.00	£38,185.90	£55,228.00	£106,573.90

65. At the hearing, Dr Davidoff produced a Service Charge Budget (at A.889-891). When asked by the Tribunal, he was unable to state when this budget had been prepared. The budget totals £106,574 and included a reserve fund of £93,414, namely £37,686 for internal works and £54,727 for external works. The budget is split between internal works (in respect of which Mrs Maharaj is liable for 20%; Mrs Lo Porto for 30% and Mrs Nasr 50%) and external works (for which the respective contributions are 20%, 20% and 60%).

66. The immediate reaction of the Applicants was to complain that the sums demanded were unreasonable and unaffordable. On 14 June, Mr Reed, on behalf of ABC, served two further Stage 2 Notices of Estimates. "Valens Ltd" who had previously been invited to tender, but had declined to do so, now provided estimates of £22,125.60 for the internal works (At A.752-754) and £41,580 for the external works (at A.648-650). No explanation was provided as to why Valens Ltd had initially been unwilling to tender, but had now provided a tender within such a short period. The Applicants were later to discover that the estimate had rather been provided by "Valens Contractors Ltd", a company which is registered in the name of Mr Reed's wife, Lisa Velenski.

67. ABC agreed to split the works, executing the external works in 2019 and the internal works in 2020. However, ABC insisted of doing all the work over the two year period, using their own choice of contractor. Their approach is reflected in two emails:

    (i) On 18 June, Ms Birikorang wrote to Mrs Lo Porto (at A.771): "Further to your request to obtain your own quotes, please note that you are no longer allowed to nominate your own contractor or obtain a quote for the works as the Part 1 S.20 Notice expired on 15th May 2019. There is a 35 day window in which you are able to obtain your own quotes so that they can be included in the tender process, but this is now closed, so unfortunately, the quotes recently sent to you in the Part 2 S20 Notice dated 14th June 2019 are the final quotes."

    (ii) On 19 June, Ms Birikorang wrote to Mrs Maharaj (at A.194): "We are not prepared to get involved in further fruitless and endless discussions emails/phone calls regarding the above topics. However, if any lessee has a fresh or different query to be answered, we will of course do our utmost to respond swiftly to any fresh issue or problem at the property."

68. On 29 June 2019 (at A.454), Mr Ibrahim Nasr, on behalf of the landlord, wrote to Ms Birikorang in these terms (emphasis added):

    "We are utterly disgusted and shocked at the costs you are trying to charge us for. Considering that the FTT Management Order requested you follow the Dobson report which he specifically highlighted that the costs involved for major works should be in the region of £15,000, as such how have you come to the cost of £92,413? We have been property developers and have worked with contractors for many years and understand the costs involved for the works and these figures are completely fabricated and plucked from thin air.

    In addition, you are charging more than double the figure we have paid for numerous years for the building's insurance. We made it clear via email that we were happy for you to use our broker and ensure that the price of the insurance is kept at a similar rate to the previous years. Just because you have been awarded the management for the building, this does not in any way change the fact that you can charge the Landlord and the Leaseholders inflated costs. On top of the increased premium for the building insurance you are also attempting to collect a fee for Insurance valuation, which you are not entitled to charge, of which we already have the rebuilding cost to hand if you require this.

    Secondly, we are also not responsible for the service charge of the shop, this has been sold on a Long Lease and would need to be collected from the Leaseholder.

    In conclusion, we contest all the costs you are attempting to collect through your budget as this is <u>outright extortion</u> and we will not be <u>held to ransom on our own property</u> and as such there will be no

payments made. Should we receive demands for reasonable costs we are prepared to meet them, but we will not be hoodwinked into paying for inflated costs."

69. In his closing submissions, Mr Davidoff stated that Mr Nasr had fabricated this letter in order to make ABC "look bad". On a balance of probabilities, the Tribunal is satisfied that Mr Ibrahim Nasr sent this letter. Having heard evidence from Mr Housam Nasr, the letter reflected how we would have expected his uncle to have responded. Mrs Nasr had just received six demands totalling £59,613.70, with no explanation justifying these charges. It is less clear to the Tribunal how Mr Nasr would have responded had a more reasonable sum been demanded, for example the sum of £15,000 which had been contemplated in Mr Davidoff's "Brief Condition Report and Management Plan".

70. It should have been apparent at this stage that the Management Order was doomed. The Manager was proposing a Schedule of Works completely outside the scope of what was proposed when the Management Order was made. The tenants were unable to afford the sums demanded. The landlord was refusing to pay. Mr Davidoff should have brought the matter back to the tribunal for further Directions. He gave no explanation for his failure to do so.

71. In his reports to the tribunal for the year 2019 and 2020 (submitted at the end of December of each year), Mr Davidoff stated that he had instructed solicitors to proceed with debt recovery on 13 November 2019. Whilst PDC wrote a number of letters (not only to Mrs Nasr, but also to the Applicants) no proceedings were issued. Mr Davidoff stated that Covid-19 had intervened. However, the first lockdown was not imposed until 23 March 2020. By this date, the Management Order had only ten months to run and there was no prospect of securing the funds necessary to carry out any package of internal or external repairs.

72. The Applicants took a conciliatory approach, albeit that they had agreed with Mr Nasr that the sums demanded were exorbitant and they were unable to afford to pay the sums demanded:

    (i) On 13 August 2019, Mrs Maharaj pad £1,529.73 and on 13 January 2020, she paid a further sum of £12,237.97, a total of £13,768 (see A.678). She informed the Tribunal that she had had to take out an additional charge on her flat in order to pay this. She informed the Manager that these sums were being paid under protest. On 1 October 2019 (at A.691), Blanchards Bailey, Solicitors, wrote to ABC complaining of the sums demanded and threatening an application to this tribunal.

    (ii) On 22 August 2019, Mrs Lo Porto paid £3,144.00 and on 2 October 2019, she paid a further sum of £11,045.60, a total of £14,189.60 (see A.679).

73. On 27 November 2019, ABC issued a further set of service charge demands for 2020:

(i) Mrs Maharaj received two demands: (a) an annual service charge in advance of for 2020 of £1,714 (at R3.33; R3.36) and (b) an internal reserve fund contribution of £7,637.20 (at R3.24). A covering letter (at R3.17) stated that a budget of £46.756 had been agreed "after consultation with your freeholder". Mr Davidoff explained that Ms Birikorang had used the wrong template. There had been no consultation with either Mrs Nasr or the Applicants over the budget. Mr Davidoff did not consider any consultation to be necessary.

(ii) Mrs Lo Porto received two demands: (a) an annual service charge in advance for 2020 of £2,024 (at R3.52) and (b) a reserve fund contribution of £11,455.80 (at R3.43). The accompanying letter is at R3.39.

(iii) Mrs Nasr received a total of five demands issued separately in respect of Flat A, Flat D and the Ground Floor Shop. These total £23,925. The accompanying letters are at R3.1, R3.55 and R3.71.

74. Mrs Lo Porto sent three emails to the Tribunal:

(i) On 20 December 2019, she sought clarification of the scope of the order. She attached the two specifications of work which had been prepared by Mr McCarthy. She complained that as a result of these schedules, her service charges had escalated to an unmanageable amount. She asked how the Management Order should be interpreted.

(ii) On 24 December 2019, she enclosed a copy of the Management Order. She stated that believed that the Manager was not upholding the decision, but was vastly overcharging for the works needed. The Manager was requesting over £22,000 (per property) over two years which was clearly above and beyond what the tribunal order had stated. ABC were now going through court proceedings via the PDC to claim the money from her. She asked "What should I do?" Was there was any way that the tribunal could reconsider the Management Order and provide clarification on the terms and payments?

(iii) On 2 January 2020, she complained about the conduct of the Manager and his proposed contract with Valens Contractors Ltd.

75. The tribunal did not take any actions on these emails. It should have done so. We apologise for this.

76. Mrs Lo Porto did not copy her emails to Mr Davidoff. However, they are an important part of the record. They confirm our assessment that both Mrs Lo Porto and Mrs Maharaj were anxious for the Management Order to succeed, provided that the Manager sought to implement it as had originally been envisaged.

77. In January 2020, the Applicants learnt that the Manager was seeking to obtain quotes for a more limited package of works. They obtained two estimates: (i) On 3 January 2020, Busy Brush Painters and Decorators

quoted £16,180 + an additional £1,600 for scaffolding (at A.150-2); (ii) On 6 January 2020, LGC Decorators quoted £23,500 + VAT (at A.145-9).

78. On 8 January 2020 (at A.180), Mrs Maharaj again asked to be able to nominate her own contractor from whom a quote could be sought. She was concerned that Mr McCarthy had grossly over specified both the internal and external works. She also pointed out that the Management Order limited ABC to a supervision fee of 5%, rather that 10% which had been included in the budget. On 10 January (at A.179) Ms Birikorang responded repeating that it was now too late for the tenants to nominate a contractor. She did not address the complaint about the supervision fee being twice the level that had been specified in the Management Order.

79. On 6 February 2020 (at A.700-2), Mr Reed, on behalf of ABC, served a further Stage 2 Notices of Estimates in respect of "external redecorations and necessary ancillary repairs works". This refers to the previous estimates provided by CJAP Ltd (£49,752) and H&C Ltd (£53,460). However, "Valens Ltd" had now reduced their quote to £29,292. Mr Davidoff has not provided the Tribunal with any of the tenders which have been submitted in this case. We merely have the Specification provided by Mr McCarthy. Someone, presumably Mr Reed, has added the prices quoted by each contactor. The priced specification is at A.703-720. It is impossible to identify the scope of the works for which Valens Ltd have quoted. Their quote (net of VAT) totals £24,410 which is broken down between (i) Contract Preliminaries: £1,000; (ii) Access and Scaffolding: £9,900; (iii) External Areas: £11,010; and (iv) Contingencies: £2,500. The critical item is the "external works" of £11,010. However, there is no indication as to which items in Section 4 of the Schedule are covered by the estimate (see A.715-718). Although the tender return includes a total works price, no specific prices were entered against the required works within Section 4. Without this detail the Tribunal were unable to discern what works "Valens Ltd" had contracted to execute in their returned tender.

80. The Applicants had become increasingly concerned about the lack of transparency and potential conflicts of interests. This related to a number of companies with whom the Mr Davidoff/ABC were contracting. The Tribunal gives one example:

> (i) On 6 February 2020 (at A.177), Mrs Maharaj emailed ABC having discovered that "Valens Ltd" had been dissolved in 2018. On 13 February 2020 (at A.177), Mr Reed responded that the company had rather been "Valens Contractors Ltd". Ms Raharah asked: "can you confirm whether any staff members of ABC Estates have any connection to any of the companies that were asked to tender for the work?" Mr Reed replied: "Not that I am aware of".
>
> (ii) On 2 March 2020 (at A.175), Mrs Maharaj sent a further email, having discovered that Lisa Velenski, Mr Reed's wife, was the sole director and secretary of Valens Contractors Ltd. On 2 March, Mr Reed responded: "It should be noted that I am not a Director, shareholder, nor do I receive any financial remuneration from Valens Ltd".

(iii) When Mr Davidoff was asked about this by the Tribunal, he came up with two explanations. First, there is nothing to preclude a managing agent from using a related company provided that a quote is sought from at least one non related company. Secondly, Mr Reed was not an employee of ABC. He was rather a self-employed contractor.

(iv) The Tribunal notes that at all times, Mr Reed has held himself out as being "Head of Block Management, Aldermartin Baines & Cuthbert" which is the trading name for ABC Block Management Limited.

81. On 4 March 2020, Ms Maharaj issued her application to this tribunal challenging the service charges which the Manager had demanded for 2019 and 2020. On 23 March 2020, the first Covid-19 lockdown was imposed. A CMH which had been fixed for 7 April 2020 was vacated. During this period, Mrs Lo Porto sought redress through the Property Redress Scheme. On 7 January 2021, the tribunal asked the parties to provide an update. On 31 January, the Management Order expired. On 17 March, the tribunal set the matter down for a CMH. On 6 April, Judge Latham gave Directions (at A.19). These included a Direction that Mr Davidoff should email the Applicants a copy of the final accounts by 4 May. Mr Davidoff has not complied with this Direction. The final accounts have still not been audited and were not available at the hearing.

82. On 4 May 2021, Mr Davidoff produced the Expenditure Report (at A.937) which sets out the sum expended and claimed by the Manger over the two year period of the Management Order. The Applicants have used this as the basis of their Scott Schedule. Mr Davidoff has asked the Tribunal to include one additional item, namely £720 in respect of the cost of Platts Chartered Accountants preparing the final Service Charge Accounts, in respect of which each Applicant would be liable for 20% (£144). The Tribunal is willing to add this to the Scott Schedule.

83. The Expenditure is broken down between:

(i) External Costs which total £13,999.91 in respect of which Mrs Maharaj is liable for 20% (£2,871.98, including a £90 late payment charge which is deducted from the total charge prior to the calculation of the apportioned payable sums); Mrs Lo Porto for 20% (£2,781.98) and Mrs Nasr for 60% (£8,345.94).

(ii) Internal Costs which total £2,409.00 in respect of which Mrs Maharaj is liable for 20% (£481.80); Mrs Lo Porto for 30% (£722.70) and Mrs Nasr for 50% (£1,204.50).

84. The position is as follows:

(i) Mrs Maharaj is liable for £3,353.78. She has paid £13,768. She claims a refund of £10,414.22. She contends that this should have been refunded to her on the expiry of the Management Order on 31 January 2021.

(ii) Mrs Lo Porto is liable for £3,504.68. She has paid £14,189.60. She claims a refund of £10,684.92. She contends that this should have been refunded to her on the expiry of the Management Order.

(iii) Mrs Nasr is liable for £13,055.12. She has paid nothing. She owes £13,055.12. It is to be noted that these are not sums paid as service charges under any lease, but pursuant to her liability under the Management Order in respect of her ownership of Flats A and D and the ground floor shop,

85. On the second day of the hearing, Mr Davidoff provided copies of the bank statements for the "service charge" and the "reserve" accounts. There was a balance of £1.20 in the service charge account and £10,863.07 in the reserve account. Two sums had been paid into the reserve account: (i) On 3 October 2019, Mrs Lo Porto had paid £11,045.60; (ii) On 13 January 2020, Mrs Maharaj had paid £12,237.97. These sums should have been held on trust on behalf of these two tenants on account for the major works which were to be executed, but which were never commenced. These have rather been used to fund the contributions which should have been made by their landlord.

86. The Tribunal highlights the following withdrawals from the reserve account:

(i) On 17 June 2021, £720 was transferred to ABC, apparently in respect of the £720 payable to Platts Chartered Accountants for the final accounts which they have yet to prepare.

(ii) On 20 January 2021 sums of £2,011,50 and £819.50 were transferred to RD Estate Services Limited, a company in which Raziel Davidoff is the sole director. Mr Davidoff was unable to provide an explanation for these transfers.

(iii) On 12 January 2021, £600 was transferred to ABC. This seems to be in respect of the handover fee on the expiry of the Management Order, albeit that no provision was made for this in the Management Order and no handover has yet occurred.

11. LON/00AL/LSC/2020/0111: Determinations under section 27A of the 1985 Act

87. Before turning to the issues which we are required to determine, we first summarise some of our findings which inform our decision:

(i) The Management Order has failed. None of the works identified by Mr Dobson have been executed. Our enquiries revealed that no money had been spent on improving the physical fabric of the Property.

(ii) Mr Davidoff must accept the primary responsibility for this failure. We were surprised by Mr Davidoff's limited knowledge of the details of this case. Whilst it is open to a Manager to delegate, he retains ultimate

responsibility to ensure that the outcomes sought through the Management Order are delivered.

(iii) Mr Davidoff failed to have sufficient regard to the terms of the Management Order. The outcome to be secured was the execution of the relatively modest package of internal and external repairs and decorations which had been identified by Mr Dobson. A period of two years was considered sufficient for the Property to be put into proper order and to give both IDM and Mrs Nasr time to come to grips with their management responsibilities.

(iv) The Applicants' primary case is that the Respondent has sought to inflate the fees that he can claim through the Management Order. Regardless of whether he sought to do so, the Tribunal is satisfied that his actions have led to inflated and wholly unreasonable sums being demanded from the Applicants and the landlord/freeholder. Mr Davidoff failed to fulfil his duties as the tribunal would expect from a tribunal appointed manager who acts as an officer of the tribunal.

(v) We can see no justification for the agreement which Mr Davidoff signed with ABC. This seems to have been no more than a device to enable Mr Davidoff to levy charges and to deal with service charge funds outside the scope of the Management Order (see [53] – [56] above).

(vi) We accept that this Management Order presented a challenge, with the landlord in default obliged to contribute the majority of the sums payable under the Management Order. The Management Order empowered Mr Davidoff to forthwith demand a payment of £500 from each of the Applicants and £1,000 from the Landlord. He did not available himself of this opportunity which would have proved a litmus test as to whether the landlord was willing to cooperate with the Manager.

(vii) It is regrettable that Mr Davidoff did not communicate with the tenants and landlord to inform them that Mr Davidson had withdrawn from the project. It is not clear to the Tribunal whether Mr McCarthy had made a completely different assessment to Mr Dobson as to the scope of the works that were required or whether he had over specified the works. What is clear is that the Manager was now proposing a package of works which was quite different from that contemplated in the Management Order. Had he engaged with the tenants and the landlord, it may be that a road plan could have been agreed. In the absence of such agreement, Mr Davidoff should have brought the matter back to the tribunal.

(viii) We are satisfied that by June 2019, the Management Order was doomed:

> (a) The Manager was proposing a package of works of works which was outside the scope of what the Tribunal had contemplated when the Management Order was made. Mr Davidoff had submitted a budget to the Tribunal for Year 1 which totalled £25,805, with major work estimated at £10,000 and a reserve fund contribution of £1,000. Mr Davidoff had rather constructed a Year 1 budget of £106,574.

(b) As soon as it was apparent that the landlord would not pay the sums demanded, Mr Davidoff should have taken stock of the situation. The Management Oder did not permit him to require the tenants to cross-subsidise their defaulting landlord.

(c) Mr Davidoff had no regard to whether the tenants could afford this inflated budget. Mr Davidoff seems to have acted on the basis that, as tribunal appointed Manager, he had authority to execute such works as he considered necessary over the two year period of the Management Order. A Manager is obliged to have regard to the means of the parties who are paying for such works.

(ix) Given that by June 2019, the Management Order was doomed, Mr Davidoff should have brought the matter back to the tribunal at the earliest opportunity. There was no practical purpose in incurring the ongoing costs of the Management Order when the desired outcome was not achievable. The only people to benefit were the Manager and his nominated contractors.

(x) The Report which Mr Davidoff provided to the tribunal in December 2019 (at p.899) did not give any adequate indication of the extent of the problems that had arisen. There was no reference to the fact that the cost of the proposed works now exceeded £93,000 or that the tenants were arguing for a more modest package of works.

(xi) It is not necessary for this tribunal on this application to offer any guidance on the extent to which it is appropriate for Manger who is an officer of the tribunal, to enter into contracts in which he has a direct or an indirect interest. However, a manager must be transparent about such dealings and be prepared to justify why such contracts secure best value for the paying parties. The dissembling which is apparent in [22(iii)] and [80] above is not acceptable.

(xii) Any service charge funds are held by a Manager under a statutory trust imposed by Section 42 of the 1987 Act. We are satisfied that Mr Davidoff has acted in breach of his fiduciary duties as trustee with regard to the sums in issue in the Applicants' Section 27A challenge.

11.1 The Scott Schedule

88. The Scott Schedule is at A.134-6. The Applicants confirmed that the only items in dispute are those highlighted in red.

1.1 Management Fee: £2,250 (2019); £2,250 (2020)

89. The Management Order specifies an annual management fee of £1,875 + VAT, a total of £2,250. The Applicant's complain of the quality of the service that was provided. We agree that the service fell far short of what the tenants might reasonably expect. No works have been executed to the physical fabric of the Building. The Applicants argue that the fee should be reduced to £900 per annum. We agree.

1.2 Building Insurance: £927.36 (2019); £1,052.05 (2020)

90. The leases required the landlord to insure the Property. Mr Davidoff, as Manager, had the responsibility to ensure that a proper insurance policy was in place. This power was specifically granted by the Management Order. On 10 May 2019, Mr Davidoff arranged insurance through St Giles Insurance & Finance Service Ltd at a cost of £927.37. The paperwork is at A.480-484. The Tribunal notes that the Building was insured for £500k, with the sum insured specified at £650k. On 7 July, Mr Davidoff disclosed an alternative quote that he had obtained from AXA on 9 May 2019 in the sum of £1,143.98. In 2020, Mr Davidoff renewed the policy at a cost of £1,052.05, the increased premium reflecting the higher rebuilding costs which was found to be necessary after the Building Reinstatement Cost Assessment ("BRCA") had been obtained.

91. The Applicants contended that the insurance was excessive and unreasonable. They had obtained two quotes from Pen Underwriting (1.3.21) in the sum of £478.88 (at A.156) and Millenium Quay Brokers Ltd (19.5.21) in the sum of £675.75 (at A.157). Mrs Lo Porto disclosed her email, dated 25 March 2021, in which she had requested the quotes. These were based on insuring the building for £650k. We are satisfied that this was much too low and should have been in excess of £1m.

92. The Tribunal is therefore satisfied that the sums claimed in respect of insurance are both payable and reasonable.

1.3 Out of Hours Helpline: £360 (2019); £360 (2020)

93. This is not a service for which a fee was sought in the Management Order. The welcome letter (at A.896) made no reference to this service. The Applicants state that they were not informed of this service, did not need it and never made use of it. No repairs were executed during the two years of the Management Order.

94. Mr Davidoff referred the Tribunal to the contract which he had signed with ABC (see [54(i)] above). It is not open to a Manger to subvert the express terms of a Management Order in this manner. We disallow this sum.

1.4 Specification of external works and common parts: £2,160 (2019)

95. Mr Dobson did not provide a specification of works in his report. When Mr Dobson withdrew from the project, Judge Dutton granted the Manager permission to appoint either Mr McCarthy or Mr Mazin. The Manager sought quotations from both surveys and selected the lowest tender. We are surprised that the Manager required Mr McCarthy to produce two schedules. However, we do not consider that any significant extra costs were incurred through this. Mr McCarthy quoted £900 per schedule + VAT. This totals £2,160. We allow this sum.

1.5 Preparing BRCA: £600 (2019)

96. The Tribunal is satisfied that the Manager was required to ensure that the property was fully insured. Mr Davidoff has referred the Tribunal to the RICS Guidance "Reinstatement Cost Assessment of Buildings" (at R1.208). On 26 November 2019, Mr Davidoff obtained a Building Reinstatement Cost Assessment from the McCarthy Partnership at a cost of £500 + VAT. The BRCA Assessment is at R2.230-233. This advised that the rebuilding costs should be insured in the sum of £1.022m.

97. The Applicants contend that this sum was not reasonably incurred as Mrs Nasr already had an assessment in hand. No such assessment has been provided. The tribunal is satisfied that this sum was properly incurred.

1.6 Preparation of Service Charge Accounts: £720 (2019)

98. The Manager claims £720 for the preparation of the 2019 accounts which are at A.608. They were prepared by Platts Chartered Accountants. The sum claimed is £600 + VAT. The Management Order contemplated that service charge accounts would be prepared.

99. The Applicants complain that the cost is excessive. They have obtained three quotes. The letter of instruction is at A.142. The quotes obtained are for (i) £400 + VAT from Dan Payne FCCA (at A.138); (ii) £350 + VAT from Rimsha Mushtaq (at A.142); and (iii) £350 + VAT from Graham Knight Accountants (at A143). The Applicants contend that the fee should be no greater than £420.

100. We reduce the fee to £420 (inc VAT). The accounts should have been extremely straight forward for a house with four flats and very little expenditure. Further, the accounts have not been prepared in accordance with the Management Order. They do not distinguish between the service charge account and the reserve fund. They do not record the contributions of the individual lessees and the freeholder. They do not compare the budget with the actual expenditure. They do not identify the surplus paid for the year by the two tenants.

1.7 Preparation of Service Charge Accounts: £720 (2020/21)

101. Mr Davidoff asked the Tribunal to consider this proposed charge in respect of the final accounts which have not yet been prepared. Such accounts were required by the Management Order. However, the accounts are not yet available, albeit that the Management Order expired on 31 January 2021. On 6 April, Judge Latham directed the Manger to email the Applicants a copy of the final accounts by 4 May. Mr Davidoff did not comply with this Direction. Despite this, Mr Davidoff took the sum of £720 out of the reserve fund on 17 June 2021 and transferred it to an ABC account, presumably so that he has resources to pay the accountants in due course. We consider this to be a breach of the fiduciary duty owed by Mr Davidoff to the tenants.

102. Mr Davidoff stated that he had not finalised the accounts as he was waiting for the decision of this Tribunal. The Tribunal had directed that the accounts should be made available so that we could see how the Manager

had accounted for the service charge funds. A Manger who flouts a Direction to produce the accounts cannot expect to be paid for them. We disallow this charge.

1.8 Handover Fee: £600 (2020)

103. The Applicants contend that this sum is not payable. No provision is made for this in either the lease of the Management Order. We agree. The Tribunal had only made an Order for a period of two years. The Tribunal would have contemplated that any handover would have been covered by the Manager's management fee.

104. Mr Davidoff referred the Tribunal to the contract which he had signed with ABC (see [54(iii)] above). We do not accept that it is open to Mr Davidoff to subvert the express terms of the Management Order by signing this agreement. Again, we note that on 12 January 2021, Mr Davidoff paid this sum to ABC from the reserve fund. This is a further beach of his fiduciary duty owed to the tenants.

1.8 Abortive Supervision Fees: (i) External Works: £2,011.50; (ii) Internal Works: £819

105. Mr Davidoff relies on the contract which he had signed with ABC to justify these charges (see [54(ii)] above). The Applicants contend that that they are not liable to pay these sums. No provision is made for this in either the lease or the Management Order. The works were not commissioned. Alternatively, they argue that the project cost was premised on an overly expansive specification which was in breach of the Management Order. They highlight that the Management Order specified a supervision fee for a successful project of 5%, rather than 10%.

106. We agree with the Applicants. It is unacceptable for a Manger to seek to subvert the express terms of a Management Order in this way. No works have been commissioned. The Manager has incurred these costs in connection with a specification of works which was outside the scope of what was contemplated in the Management Order. These sums are not payable by the Applicants.

1.9 Summary of our Findings in Respect of the Service Charge Items

107. The Tribunal has made the following reductions to the service charge items included in the Manager's Expenditure Report:

(i) Management Fees reduced from £4,500 to £1,800, a reduction of £2,700;

(ii) Out of Hours Helpline: £720;

(iii) Service Charge Accounts (2019): £300;

(iv) Service Charge Accounts (2020/21): Although we have made a reduction of £720, this has not been included in the Expenditure Report;

(v) Handover Fee: £600

(vi) Abortive Supervision Fees: £2,011.50 (external) and £819 (internal).

108. The Tribunal has reduced the external service charge items by £6,331.50 and the internal items by £819. Both Mrs Maharaj and Mrs Lo Porto pay 20% of the external service charges, so each are entitled to a reduction of £1,266.30. Mrs Maharaj pays 20% of the internal charges and Mrs Lo Porto 30%, so they are entitled to a further reduction of £163.80 and £245.70 respectively. The total deductions are therefore £1,430.10 for Mrs Maharaj and £1,512.00 for Mrs Lo Porto.

109. The position of the respective parties is now as follows:

(i) Mrs Maharaj is liable for £1,923.68 (reduced from the figure of £3,353.78 specified in [84] above). She has paid £13,768. She is entitled to a refund of £11,844.32.

(ii) Mrs Lo Porto is liable for £1,992.68 (reduced from £3,504.68). She has paid £14,189.60. She is entitled to a refund of £12,196.92.

We do not make any adjustments for the modest interest which has been earned on the two service charge accounts.

11.2 Demands for Payments of Reserve Fund Contributions

110. The Applicants seek a determination as to their liability to pay reserve fund contributions of £29,292 for external works and £10,920 for internal works. We suggest that their sums are wrong and that the reserve fund contributions on 11 June 2019 totalled £55,228 for external and £38,185.90 for internal works (see [62] to [64] above). This aspect of their claim is largely academic as the Management Order has expired, no works have been executed, and they claim a full refund of their contributions.

111. The Applicants contend that these sums should not have been demanded and it is appropriate for us to consider this. Their case is set out concisely in their Scott Schedule. The sums claimed were excessive and unreasonable. The Specification of Works was overly expansive. The works contemplated in the Management Order, based on Mr Dobson's Report, could have been executed for much less. This is confirmed by the estimates which they had obtained. Both the external and internal works could have been executed for no more than £30,000.

112. We agree with the Applicants. In December 2018, Mr Davidoff had submitted a budget to the tribunal for Year 1 which totalled £25,805. Major works were estimated at £10,000 with an additional reserve fund contribution of £1,000. Mr Davidoff however, demanded a total of £106,574.

12. LON/00AL/LAM/2018/0012: Directions sought under the Management Order

12.1 Directions sought by the Tenants

113. The Applicant Tenants seek a Direction that the Manager repays the sums that are due to them. We are satisfied that Mr Davidoff was not entitled to draw on the contributions made by the tenants to the reserve fund to meet the shortfall of the sums due from the landlord. Mr Davidoff cannot rely on his agreement with ABC to subvert the express terms of the Management Order.

114. The Tribunal rather turns to the terms of the Management Order which are discussed in Section 8. The Order grants the Manager the power to establish a reserve fund (see [42(v)] above). However, the Manager is required to deal with those funds separately. Specific reference is made to Section 42 of the 1987 Act. Paragraph 21 of the Schedule to the Order (at [47(iii)] above), requires the accountant to certify any over or under payment. Any overpayment is to be credited to the payee; any underpayment is to be recovered as a debt.

115. We reject Mr Davidoff's contention that this Tribunal has no jurisdiction to consider how the two service charge accounts have been handled. We follow the guidance provided by the Upper Tribunal is *Suchorski v Norton*. The Manager has held these on trust for the tenants pursuant to section 42 of the 1987 Act. We are satisfied that he has been in breach of his fiduciary duties towards the Applicants.

116. The Tribunal has computed that Mrs Maharaj is entitled to a refund of £11,844.32; whilst Mrs Lo Porto is entitled to one of £12,196.92. We direct that the Manager refunds these sums to the Applicants. They should have been refunded on the expiry of the Management Order on 31 January 2021. If these repayments are not made, the Applicants will be able to recover them as a debt in the County Court.

12.2 Directions sought by the Manager

12.2.1 Authority to charge a handover fee of £600

117. We are not willing to give Mr Davidoff the power to levy a handover fee of £600. In breach of his fiduciary duties as trustee of the reserve fund, he has paid this fee to ABC without any authority from the tribunal and before any such handover has occurred.

118. No provision was made for a handover fee in the Management Order. The Tribunal had not considered it necessary to make such provision, because it would have considered the costs of the handover to be covered by the Manager's management fees. The Tribunal had made express provision of £500 for a set up charge.

12.2.2 Recovery of the Manager's costs in respect of this application against the Interested Party

119. Mr Davidoff accepted that this is a "no costs jurisdiction". He would therefore not be able to seek his costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules"). He further recognises that he has no prospect of recovering his costs against the Applicants, as the successful parties. He therefore seeks a direction that he should be entitled to recover his costs against Mrs Nasr, the Interested Party. By a letter dated 7 July 2021, the Manager quantifies his costs at £9,360. He states that as a "gesture of goodwill" he has only billed for 50% of the time spent on the preparation work,

120. We refuse to make this Direction for two reasons. First, the Interested Party has played a limited role in this application. Mrs Nasr has not sought any specific relief from the Tribunal. Her involvement has not led to any significant costs. Secondly, the basis of the application is that the Management Order failed because Mrs Nasr refused to pay the contributions that were due from her under the Management Order. Mrs Nasr refused to pay the sums of £59,613.17 which were demanded on 11 June 2019 because she considered them to be excessive. She described them as "outright extortion"; she would not be "held to ransom" on her own property. The total sums demanded exceeded £106,500. The Management Order had been premised on a Year 1 Budget of £25,805. The sums demanded were outside the scope of what was contemplated by the Management Order. Had a sum been demanded in line with that contemplated in the Management Order, it may be that the landlord would have paid. It is not necessary for the Tribunal to make any finding on this point.

12.2.3 Authority for the Manager to sue the landlord in respect of the arrears payable under the Management Order

121. Mr Davidoff seeks a Direction from the Tribunal giving him authority to sue Mrs Nasr for the arrears arising under the Management Order. We are willing to make such a Direction. However, the Manager must be personally responsible for any costs relating to such an action. It would be inappropriate to require the tenants to indemnify the Manager for any costs incidental to such an application. The position might have been different had the Manager sought authority for such action whilst the Management Order was current.

122. The Tribunal has not been required to determine what sums were payable by Mrs Nasr pursuant to the terms of the Management Order. From the Expenditure Statement (at A.937), it seems that the Manager contends that some £17,896 is due. This sum is not sought as a service charge pursuant to any lease, but rather as the landlord's contribution under the Management Order.

Refund of Fees

123. The Applicants have made an application for the refund of the tribunal fees of £300 which they have paid pursuant to Rule 13(2) of the Tribunal

Rules. Their application has been successful. We therefore order the Respondent to refund these fees within 28 days.

124. We do not consider that it is open to either the Manager or the landlord to pass on the costs of this application through the service charge. However, for the avoidance of doubt, we make an order under Section 20C of the 1985 Act preventing either of them from doing so. We are satisfied that it is just and equitable to do so.

Judge Robert Latham
12 August 2021

Rights of appeal

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

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

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

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

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

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