

10789



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

**Case Reference** : **MAN/OOCK/LAM/2013/0013**

**Property** : **Arndale House, 6 Saville Street West, North Shields, NE29 6QU**

**Applicants** : **Terence John Harris  
Brian Stephen Harding  
Jitendra Patel  
Anjana Patel  
Gerald Revell Wolff  
Rosalie Anne Wolff**

**Represented by** : **Brethertons Solicitors**

**Respondent** : **Balal Ali**

**Type of Application** : **Landlord and Tenant Act 1987 – Section 24**

**Tribunal Members** : **P Forster  
I D Jefferson MRICS  
A R Paterson**

**Date of Decision** : **5 June 2014**

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**DECISION**

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## **Decision**

1. The Tribunal determines that it is just and reasonable to appoint a manager of the Property under s.24 of the Landlord and Tenant Act 1987 in the terms of the Order attached to this Decision appointing Nick Westall of Potts Gray Management Co. Ltd. as Manager of the Property.

## **Background**

2. This is an application for the appointment of a manager under s.24 of the Landlord and Tenant Act 1987 ("the Act"). The Applicants are: Terence John Harris; Brian Stephen Harding; Jitendra Patel; Anjana Patel; Gerald Revell Wolff and Rosalie Anne Wolff, who are the leasehold owners of four flats in Arndale House, 6 Saville Street West, North Shields, NE29 6QU ("Arndale House"). The Respondent is Balal Ali who owns the freehold of Arndale House.
3. Arndale House is a block of eight flats above a ground floor furniture shop leased to Benticks Ltd. a company owned by Mr Ali. Four of the eight flats are held by Mr Ali. Since September 2012, Benticks Ltd. had been managing the block on Mr Ali's behalf. The previous agents, Potts Gray, had resigned as managing agent because Mr Ali had not paid his proportion of the service charges.
4. The Tribunal issued Directions on 27 November 2013 which required the Applicants to send to the Tribunal and to Mr Ali a bundle of documents to include a statement of case; copies of any documents on which they relied and a witness statement from the proposed manager. The Applicants complied with those Directions. In turn, Mr Ali was also required to produce a bundle of documents to include, in particular, his statement of case in response to the application. Mr Ali did not comply with the Directions and until very shortly before the hearing he did not respond to the proceedings.
5. On 16 April 2014, Mr Ali sent an email to the Tribunal to say that he would not be able to attend the hearing that was due to take place the following day because of "urgent business that has come up unexpected". He said that as the "owner of the majority of the building" he would prefer to give the management to another company rather than Potts Gray, as nominated by the Applicants. Mr Ali said that he would send a representative to the hearing of the management company that he would like to be appointed.
6. The Tribunal inspected the exterior and common parts of Arndale House on 17 April 2014. The hearing took place immediately afterwards at the Immigration and Appeals Tribunal Centre, North Shields. Two of the Applicants, Mr Harris and Mr Wolff were present. The Applicants were represented by Stephanie Smith. Mr Ali did not attend the hearing. Mr Malik of HM Residential was present. He told

the Tribunal that he had been sent by Mr Ali and that he was there to observe the proceedings.

## **The Leases**

7. The Applicants hold under long-leases in the same terms:

clause 3, the Landlord covenants with the Tenant to observe and perform the obligations set out in Schedule 8;

clause 4, the Landlord covenants with the Tenant to carry out the works and do the acts and things set out in Schedule 5;

Schedule 5 provides the following:

- a. paragraph 1, cleaning the internal common parts of the building at such frequency as the landlord may consider desirable or necessary;
- b. paragraph 2, providing operating maintaining and (if necessary) renewing and adding to:-
  - i. the fixtures fittings and furnishings provided in the internal common parts of the building and
  - ii. The lighting apparatus of the building.
- c. paragraph 3, repairing re-building re-pointing or otherwise treating as necessary and keeping the building in good and substantial repair order and condition and renewing and replacing all worn or damaged parts;
- d. paragraph 4, the painting with good quality paint or otherwise treating all the wood metal stone and other surfaces of the building at least once in every five years throughout the term of this lease...;
- e. paragraph 5, cleaning as necessary the internal common parts... at such frequency as the landlord may consider desirable or necessary;
- f. paragraph 8, providing and arranging for the emptying of receptacles for normal household rubbish for the use of the tenants of the flats;
- g. paragraph 10, abating any nuisance and executing such works as may be necessary for complying with any notice served by a local authority in connection with the building or any part of it in so far as the same is not the liability of or attributable to the fault of any individual tenant of any of the flats;

- h. paragraph 13 (and repeated at paragraph 31), generally managing and administering the building and protecting its amenities and for the purpose of employing a firm of managing agents (or charging a reasonable management fee if it carried out the management itself) and (insofar as the landlord thinks fit) enforcing or attempting to enforce the observance of the covenants on the part of any tenant of any of the flats;
- i. paragraph 17, keeping the building and internal common parts in good repair and condition and clean and tidy and where necessary clearing snow from them; and
- j. paragraph 25, keeping the external common parts of the development in good repair and clean and tidy and in good repair and condition at such frequency as the landlord may consider desirable or necessary.

Schedule 6 provides the following shall apply to the lease:

- k. paragraph 1, the certificate of the accountant for the time being appointed by the landlord as to the total amount of the service charge expenses for the period to which the account relates shall (subject as mentioned below) be binding on the landlord and tenant;
- l. paragraph 2, a summary of the service charge expenses for each subsequent year ending 31<sup>st</sup> March or such other period as the landlord may from time to time nominate during the term of this lease shall be prepared and the landlord shall within six months of the end of the period to which the summary relates serve on the tenant a copy of it and of the certificate of the accountant referred to in paragraph 1 above;

Schedule 8 provides at paragraph 2 that, the tenant paying the rents hereby reserved and performing and observing the several covenants on his part and the conditions herein contained shall peaceably quietly hold and enjoy the property and the rights hereby granted during the said term without any lawful interruption from or by the landlord or any person lawfully claiming under or in trust for it.

### **The Applicants' Case**

- 8. On 27 June 2013, the Applicants served a notice under s.22 of the Act. The notice set out the following grounds in support of the application to appoint a manager:
  - (i) Mr Ali is in breach of his obligations to the Applicants under the terms of the leases and relating to the management of the Arndale House; and it is just and convenient to make the order in all the circumstances of the case: s.24(2)(a);

- (ii) unreasonable service charges have been made, or are likely to be made, and it is just and convenient to make the order in all the circumstances of the case: s.24(2)(ab);
  - (iii) Mr Ali, or Benticks Ltd. as his managing agent, has failed to comply with relevant provisions in the code of practice approved under s.87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and it is just and convenient to make the order in all the circumstances of the case: s.24(2)(ac); and
  - (iv) other circumstances exist which make it just and convenient for the order to be made.
9. The Applicants allege numerous breaches by Mr Ali of his obligations under the leases: he has failed -
- a. to keep the hallway of the property and fire exits clear of rubbish: Sch.5, paras.1, 5 and 17;
  - b. to maintain the common entrance hall resulting in holes in the walls and poor repairs thereto: Sch.5, paras.3 and 17;
  - c. to install and maintain adequate fire doors for the property: Sch.5, paras.3 and 17;
  - d. to keep the smoke vent in a reasonable state of repair and condition: Sch.5, paras. 3 and 17;
  - e. to maintain the walls which now have holes in them: Sch.5, paras.3;
  - f. to keep the carpets adequately clean: Sch.5, paras.1, 5 and 17;
  - g. to repair the post-boxes adjacent to the entrance of the building: Sch.5, para.25;
  - h. to ensure that the lights in the communal parts are in working order: Sch.5, para.2;
  - i. to keep the building (particularly the patio roof above the bedroom to Flat B) in good and substantial repair order and condition, causing severe water penetration to the flat below resulting in a collapsed ceiling and the growth of toxic mould;
  - j. to manage or administer the development with any degree of efficiency: Sch.5, para.13;

- k. to send a summary of service charge expenses compliant with paras.1 and 2 of Sch.6;
  - l. to abate the nuisance behaviour from other sub-tenants in the flats of the building including excessive noise, intimidating and aggressive behaviour and drinking and smoking in the communal areas.
10. On 19 April 2012, Potts Gray was appointed by Mr Ali to manage Arndale House. The Applicants say that during their period of tenure they made a real effort to address the problems that beset the property. However, in an email sent on 20 August 2012 to Potts Gray Mr Ali stated that he would not agree to make any payments for his four flats. That led to Potts Gray resigning as managing agents in September 2012. Since then, the management of the property has again deteriorated along with the condition of Arndale House.
11. It is submitted that lack of funds to carry out the necessary functions do not excuse the landlord's breaches. Having regard to the history of non-compliance with the landlord's covenants there is no prospect of future compliance with the landlord's obligations in the lease.
12. For those reasons, the submission is that it is just and convenient to make an order appointing a manager.
13. By reference to s.24 (2A) of the 1987 Act, the Applicants submit that they are only required to contribute towards service charges insofar as those charges reflect value for money. If the standard of works or services is too low when compared with the sums charged, the service charges should be reduced by an appropriate proportion. The Applicants argue that, for the year ending 30 April 2013 the service charges were unreasonable in respect of: internal cleaning (£360); inspections (£100); responsive repairs (£500); and professional management fee (£1,440).
14. It is submitted that Mr Ali and his managing agent Benticks Ltd. have failed to comply with the RICS Service Charge Residential Management Code in respect of: *accounting for other people's money; service charges, ground rent and administration charges; accounting for service charges; and repairs.*
15. The Applicants submit that Nick Westall of Potts Gray should be appointed as manager to assume the obligations of the landlord under the lease concerning the management and administration of the building.

**The Law**

16. S.24 of the Landlord and Tenant Act 1987 sets out the criteria which must be considered by the Tribunal prior to the appointment of a manager. The requirement for the service of a s.22 notice giving the reasons for the application and identifying breaches of management obligations was complied with before the submission of the application.

17. S.24(1) of the 1987 Act provides:

(1)[A leasehold valuation tribunal] may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—

(a)such functions in connection with the management of the premises, or

(b)such functions of a receiver,

or both, as [the tribunal] thinks fit.

18. S. 24(2) sets out the circumstances in which a tribunal may make an order which include:

[A leasehold valuation tribunal] may only make an order under this section in the following circumstances, namely—

(a)where [the tribunal] is satisfied—

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

(ii). . . . .

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

[(ab)where [the tribunal is satisfied—

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

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

(ac) where [the tribunal] is satisfied—

(i) that [any relevant person] has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

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

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

[(2ZA) In this section “relevant person” means a person—

(a) on whom a notice has been served under section 22, or

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

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

(a) if the amount is unreasonable having regard to the items for which it is payable,

(b) if the items for which it is payable are of an unnecessarily high standard, or

(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

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

## **Reasons**

19. Mr Ali did not submit a statement of case; he did not take part in the proceedings and he did not attend the hearing. The Tribunal must determine the application on the evidence that the Tribunal has before it.



20. The application to appoint a manager is in respect of the whole of Arndale House and includes the commercial premises on the ground floor as well as the eight flats above it. The Tribunal needs to be satisfied that the Tribunal has jurisdiction to make an order that covers the whole block. Ms Smith, on behalf of the Applicants, has filed a helpful submission on that point.
21. Under s.21 of the 1987 Act, a tenant of a flat contained in any premises to which Part II of the Act applies, may apply for an order under s.24. subject to exclusions in sub-paragraph (3) which do not apply here. S.21(2) applies Part II to premises consisting of the whole or part of a building if the part contains two or more flats. S.24 allows for a manager to be appointed in relation to any premises to which Part II of the Act applies to carry out such functions in connection with the management of the premises as the Tribunal thinks fit.
22. The Tribunal has jurisdiction to make an order in respect of the whole of Arndale House. That jurisdiction is wide but the Tribunal needs to limit the scope of any order that the Tribunal may make to ensure that the functions to be exercised by the manager are primarily in relation to the residential flats and only affect the commercial premises so far as is necessary to achieve the objective of protecting the interests of the Applicants.
23. It was evident when the Tribunal inspected Arndale House that work had recently been done to improve the appearance of the premises. The Tribunal had the Applicants' witness statements and the oral testimony of Mr Harris and Mr Wolff and the evidence of Mr Westall.
24. When the Tribunal carried out its inspection, the hallway of the property and fire exits were clear of rubbish. There was debris in the meter room which had not been cleared out completely. It appeared that the carpets had been cleaned to some extent. New post boxes had been fitted by one of the leaseholders in the hallway to replace boxes on the wall outside the front door which were still in place. There was a redundant key box on the wall in the hallway with its door open and no keys inside. The front door stuck when it was opened and needed a firm push. The smoke vent at the top of the building did not appear to be operating correctly. Some of the lights in the hallways were on permanently and others came on as we went up the stairs.
25. Mr Harris gave evidence at the hearing to supplement his witness statement. The Tribunal found Mr Harris to be a very credible witness. He gave his evidence in a straightforward way and he did not try to embellish his complaints. There are photographs attached to his witness statement that show the condition of the communal areas before the recent work was done. There are also copies of emails that he sent regarding complaints that he had received from prospective tenants who had been deterred by the state of the building. Mr Harris told the Tribunal about household rubbish in the hallways and piled up outside the rear door making it impossible to open. He said that the

- front door was difficult to open. The Tribunal saw that for itself. Mr Harris considered that to be a fire risk. He described holes in the hallway, walls and staircase caused by the vandalism of some of Mr Ali's tenants. There was no evidence that the fire alarm had been tested or maintained. Mr Harris complained about the lighting in the common parts which did not work properly. He said that the carpets were not cleaned. The smoke vent did not work automatically as it was designed to do. The letter boxes on the outside of the building had been vandalised and not repaired. Mr Harris' evidence was that little if any work was done to maintain the common parts of the building.
26. The Tribunal heard from Mr Wolff. He was also a reliable witness. His description of Arndale House was consistent with what the Tribunal had been told by Mr Harris. He told the Tribunal that he had only been able to let his flat at below the market rate because of the state of the building. Copies of correspondence from his letting agent were attached to his witness statement. Mr Wolff told us about a problem he had with the safety panels that surround his balcony. They had fallen into disrepair and despite his efforts Mr Ali had failed to address the issue. Mr Wolff eventually undertook the repairs at his own expense.
  27. The Tribunal had an inspection report prepared by Chris Jude BSc. MRICS who inspected the property on 20 December 2013. He listed many maintenance and management issues. He concluded that the communal areas and exterior of the building were clearly in disrepair with little or no recent maintenance noted. Some of the items noted were significant health and safety issues which in his view required urgent attention. He calculated the cost of the necessary works at £15,000 plus VAT and professional fees. Mr Jude attended the hearing and confirmed what he had said in his report.
  28. The Tribunal accept the evidence from Mr Harris and Mr Wolff which is supported by Mr Jude. Mr Ali has not argued against what they say.
  29. On the evidence, the Tribunal finds that Mr Ali is in breach of his obligations to the Applicants under the terms of the leases and relating to the management of the Arndale House and it is just and convenient in all the circumstances to make an order under s.24(2)(a) of the Act.
  30. The Tribunal has accepted the evidence presented to it about the condition of the property and the Tribunal found that Mr Ali failed to meet his obligations under the leases relating to the repair and maintenance of Arndale House. The Tribunal also finds that the service charges made in respect of the year to 30 April 2013 are unreasonable having regard to the poor standard of the services provided, if they were provided at all. The Tribunal find that unreasonable service charges have been made and that it is just and convenient in all the circumstances to make an order under s.24(2)(ab) of the Act.

31. It is apparent to the Tribunal that Mr Ali, or his agents Benticks Ltd. have not complied with the relevant provisions in the approved code of practice. It is doubtful that they were aware of the code and what was required of them. The standard of management in all respects was very poor. The Tribunal find that it is just and convenient to make the order in all the circumstances under s.24(2)(ac) of the Act.
32. It is appropriate for the Tribunal's order to extend to management of the whole building. The purpose of Part II of the 1987 Act is to protect the interests of leaseholders by enabling them to secure through the machinery of the appointment of a manager the carrying out of the management functions they are entitled to enjoy in relation to the building of which their flats are part. Therefore, the order will extend to the whole of Arndale house including both the residential and commercial parts.
33. The management functions should include the repair, maintenance, improvement and insurance of Arndale House. Those functions should include the collection of any arrears and demanding payments due in accordance with the leases.
34. The appointment of the manager shall be for a period of five years. It should be appreciated that provision is made for an application by any person interested for such an order to be varied or discharged under s.24(9) and (9A) of the Act.
35. The Tribunal considers that Nicholas Westall is a suitable person to appoint as manager of Arndale House. He is a director of Potts Gray Management Co. Ltd. which managed Arndale House between April 2012 and September 2012. He is familiar with the property and has experience of managing other similar properties in the North East. He gave evidence at the hearing and he was confident that with the authority of the Tribunal's order and supported by the Applicants' solicitors he would be able to ensure compliance with the terms of the leases. In his report dated 7 January 2014, Mr Westall sets out a proposed programme of works to improve the condition of Arndale House and establish good management of the building.



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

**Case Reference** : **MAN/OOCK/LAM/2013/0013**

**Property** : **Arndale House, 6 Saville Street West, North  
Shields, NE29 6QU**

**Applicants** : **Terence John Harris  
Brian Stephen Harding  
Jitendra Patel  
Anjana Patel  
Gerald Revell Wolff  
Rosalie Anne Wolff**

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**MANAGEMENT ORDER DATED 5 June 2014**

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## **Definitions**

In this Order:

- A. "Property" includes all those parts of the property known as Arndale House, 6 Saville Street West, North Shields, NE29 6QU including the residential and the commercial parts and the common parts;
- B. "Landlord" means Balal Ali or in the event of the vesting of the reversion of the residential or commercial leases of the property in another or any interest created out of that reversionary interest, the landlord's successor(s) in title;
- C. "Lessee" means a tenant of a dwelling in the Property holding under a long lease as defined by section 59(3) of the Landlord & Tenant Act 1987 and/or any tenant of the commercial premises on the Ground Floor of the Property and "Lease/Leases" is to be construed accordingly; and
- D. "Manager" means Nick Westall of Potts Gray Management Co. Ltd..

## **Preamble**

UPON the Applicants having applied for the appointment of a manager under Pt.II, Landlord and Tenant Act 1987

AND UPON the First-tier Tribunal (Property Chamber) ("the Tribunal") being satisfied that the Applicants are entitled to so apply and that the jurisdiction to appoint a manager is exercisable in the present case

AND UPON the Tribunal being satisfied that the conditions specified in s.24, Landlord and Tenant Act 1987 are met, such that it is just and convenient to appoint a manager

**IT IS ORDERED THAT:**

1. In accordance with s.24(1) of the Landlord and Tenant Act 1987, Nick Westall of Potts Gray Management Co. Ltd. shall be appointed as the Manager and receiver of the Property pursuant to s.24 of the Landlord and Tenant Act 1987 for a period of five years commencing on the date of this Order, namely 1 July 2014 and is given for the duration of his appointment all such powers and rights as may be necessary and convenient and/or in accordance with the Leases to carry out the management functions of the Landlord (the generality of such powers and rights being without prejudice to what follows herein).
2. The Directions and Schedule of Functions and Services attached to this Order apply and are incorporated into this Order
3. Without prejudice to the generality of paragraph 1 of this Order (above), the Manager shall manage the property in accordance with:
  - a) The Directions and Schedule of Functions and Services referred to above at paragraph 2 of this Order;
  - b) The respective obligations of the Landlord and the Lessees (both residential and commercial) and/or any under-lessees by which the flats and/or commercial premises at the property are demised by the Landlord and in particular with regard to repair, decoration, provision of services to and insurance of the Property; and
  - c) The duties of manager set out in the Service Charge Residential Management Code (2009) ("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 Act 1993.
4. From the date of this Order, no other party shall be entitled to exercise a management function in respect of the Property where the same is a responsibility of the Manager under this Order.

5. From the date of this Order, the Landlord shall not, whether by itself or any agent, servant or employee, demand any further payments of service charges, administration charges or any other monies from the Lessees (excluding any commercial leaseholder of the Ground Floor) at the Property. Such functions are transferred to the Manager forthwith.
6. The Landlord and the Lessees and any agents or servants thereof shall give reasonable assistance and cooperation to the Manager in pursuance of his duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of his said duties and powers.
7. An order is made under s.20C of the Landlord and Tenant Act 1987, that the Respondent's costs before the Tribunal shall not be added to the service charges.

## **DIRECTIONS**

These Directions are incorporated into the Order, dated 3 June 2014.

1. The Manager shall, in the performance of his functions under this Order, exercise the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and shall ensure he has appropriate professional indemnity cover in the sum of at least £250,000.00 providing copies of the current cover note upon request by any Lessee, the Landlord or the Tribunal.
2. That not later than four weeks after the date of this order the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicants and the Landlord shall transfer to the Manager all the accounts, books, records and funds (including without limitation, the service charge reserve fund).
3. The Landlord shall give full details to the Manager of all sums of money it holds in the service charge fund and any reserve fund in relation to the property, including copies of any relevant bank statements and shall forthwith pay such sums to the Manager. If the Landlord shall thereafter receive such sums due under the Leases it shall forthwith pay such sums to the Manger without deduction or set-off.
4. The Landlord shall permit the Manager, and assist him as he reasonably requires, to serve upon Lessees any Notices under s146 of the Law of Property Act 1925 or exercise any right of forfeiture or re-entry or anything incidental to or in contemplation of the same.
5. The Landlord shall provide copies of all keys (and/or any other means of access) to the Property (excluding the lock up commercial premises) and/or the electricity, gas, water and any other utility meters located in the Property. To this end, the Landlord shall give the Manager full access to the electricity, gas and water meters, fuse board and any other utility meters located in the property.



6. Not later than four weeks after the date of this order the Landlord shall provide to the Manager contact details for a person who can give access to the commercial premises.
7. The rights and liabilities of the Landlord arising under any contracts of insurance, and/or any contract for the provision of any services to the property in place at the date of this order shall upon the date four weeks from the date of this order become rights and liabilities of the Manager and the Manager shall be empowered to manage and/or administer and/or cancel the same at his discretion.
8. That the Landlord shall forthwith put the Manager in funds (to the extent not accounted for by the Lessees' contribution towards the service charge as set out in their respective Leases – as for which see below at paragraph 8) for the purpose of carrying out any or all of the functions in accordance with the Schedule of Functions and Services attached and/or the respective obligations of the Landlord by which the four flats at the property retained by the Landlord and in particular with regard to repair, decoration, provision of services to the Property (including but not limited to cleaning and maintaining the internal and external common parts of the Property) and insurance of the Property.
9. 55.04% of the costs and expenditure in providing services to the Property falls to be paid by the Lessees of the four flats. The balance of 44.96% falls to be paid by the Landlord who holds the other four flats and who is liable to provide the services to the Property. So as to ensure that the Manager can obtain the equivalent of 100% of the service charge the Manager is authorised to demand, claim and, if necessary, sue the Landlord for the same. Such sums are to be computed as if Schedule 6 to the Leases applied and include any sums owing for services provided prior to the date of this Order to which the Landlord has failed to contribute.
10. That the Manager shall account forthwith to the Landlord for the payment of ground rent received by him. The Manager shall apply all other amounts received by him (other than those representing his fees) in the performance of the Landlord's covenants contained in the said leases.

11. That the Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable in proportion from the Landlord and as part of the service charges of the Leases of the property) in accordance with the Schedule of Functions and Services attached.
12. That at the expiry of six months from the date of this order, the Manager shall prepare a brief written report for the Tribunal on the progress of the management of the Property up to that date and shall submit the same to the Tribunal by no later than 1 March 2015.
13. The Manager shall act fairly and impartially in his dealings in respect of the Property.
14. The Manager is directed to register this Order against the Landlord's freehold estate registered under title number TY222485.
15. The obligations contained in this Order shall bind any successor in title and the existence and terms of this Order must be disclosed to any person seeking to acquire either a leasehold interest (whether by assignment or fresh grant) or the freehold.
16. The Manager shall be entitled to apply to the Tribunal for further directions in accordance with section 24(4) of the Landlord and Tenant Act 1987, with particular regard (but not limited to) the following:
  - a. any failure by any party to comply with any obligation imposed by this Order (including the Directions and/or Schedule of Functions and Services);
  - b. (if so advised) upon the service of the report in paragraph 6 of these Directions, and/or;
  - c. for directions generally;
  - d. in the event that there are insufficient sums held by him to discharge his obligations under this Order and/or to pay his remuneration.

## **SCHEDULE OF FUNCTIONS AND SERVICES**

This Schedule is incorporated into the Order dated 3 June 2014

### **1. LANDLORD/LESSEE COVENANTS**

- 1.1 To observe the Landlord's covenants under the Leases with regard to insurance, repairs, the provision of services, and the giving of consents for alterations to the Property.
- 1.2 To use his best endeavours to enforce the Lessees' covenants under the Leases.

### **2. SERVICE CHARGE**

- 2.1 To prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the Landlord and the Lessees as per the percentage share under the terms of their Lease.
- 2.2 To demand and collect rents, service charges, insurance premiums and any other payments due from the Landlord and Lessees. At the Manager's discretion, instruct solicitors to recover unpaid rents and service charges and any other monies that are due.
- 2.3 To place, supervise and administer contracts (including but not limited to insurance, utilities and cleaning contracts) and check demands for payment for goods, services and equipment supplied for the benefit of the Property within the service charge budget.

### 3. ACCOUNTS

- 3.1 To prepare and submit to the Landlord and the Lessees an annual statement of account detailing all monies received and expended on its behalf. Such accounts to be certified by an external auditor if required by the Manager.
- 3.2 To produce for inspection within 28 days of any request, receipts or other evidence of expenditure.
- 3.3 All monies collected on the Landlord's behalf will be accounted for in accordance with the Accounts Regulations in respect of the receipt of client's money as issued by the Royal Institution for Chartered Surveyors, subject to the Manager receiving interest on the monies whilst they are in his client account. Any reserve fund monies to be held in a separate client account with interest accruing to the Landlord.
- 3.4 To open and operate client bank accounts in relation to the management of the Property and to invest monies pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to s.42 of the Landlord and Tenant Act 1987. The Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the Leases or to powers given to him by this Order) and all other monies received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund.

### 4. FINANCE

- 4.1 The Manager is empowered, whether by himself or through Potts Gray Management Co. Ltd., to borrow all sums reasonably required by him 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 or contributions due from the Lessees or any sums due from the Landlord, 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 Premises in respect of the Landlord) PROVIDED THAT the Manager shall not secure any borrowing as aforesaid without the consent of the defaulting party (not

to be unreasonably withheld), or in default of that consent, without further Order of the Tribunal.

5. REPAIRS & MAINTENANCE so far as it relates to the residential and communal areas
  - 5.1 To carry out regular inspections (at the Manager's discretion but not less than four per year) without use of equipment, to such of the common parts of the Property as can be inspected safely and without undue difficulty to ascertain for the purpose of day-to-day management only the general condition of those common parts.
  - 5.2 To deal with routine repair and maintenance issues and instruct contractors to attend and rectify any problems in accordance with the terms of the residential Leases. Deal with all building maintenance relating to the services to and structure of the Property.
  - 5.3 To appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
  - 5.4 To consider works to be carried out to the Property in the interest of good estate management and make appropriate recommendations to the Landlord and the Lessees.
  - 5.5 To set up a planned maintenance programme to allow for the periodic cleaning and/or re-decorations of the exterior and interior of the Property and any internal and external common parts.
  - 5.6 In addition to undertaking and arranging day-to-day maintenance and repairs, to arrange and supervise major works which are required to be carried out to the Property (such as extensive interior or exterior redecoration or repairs required to be carried out under the terms of the Leases or other major works where it is necessary). To prepare a specification of works, obtain competitive tenders, serve relevant notices on the Lessees and supervise the works in question in accordance with the terms of the leases.

6. HEALTH & SAFETY

- 6.1 To organise health and safety and fire safety checks (but not specialist checks and tests) as necessary and ensure appropriate risk assessments are in place.

7. INSURANCE

- 7.1 To arrange and keep in force an insurance policy for the Property in accordance with the Leases.
- 7.2 To collect and receive any insurance premiums payable by the Landlord and Lessees.
- 7.3 To deal with all insurance claims for the Property as and when they occur and comply with the rules of the Financial Services Authority when carrying out any regulated insurance activities.

8. GENERALLY

- 8.1 To delegate functions as he thinks fit to other employees of Potts Gray Management Co. Ltd. and/or to appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions.
- 8.2 To commence proceedings or such other enforcement action as is necessary to recover sums due from the Landlord or Lessees pursuant to paragraphs 8 and 9 of the Directions attached hereinabove.
- 8.3 To rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the Landlord or any Lessee owing sums of money under his Lease.

9. FEES

- 9.1 Fees for the above mentioned management services are a basic fee of £1440.00 per annum for the property. Those services to include the services set out in paragraph 2.4 of the Service Charge Residential Management Code (2009) published by the RICS from time to time in force.

- 9.2 Major works carried out to the property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees informing them of the works and supervising the works) will be subject to a maximum charge of 10% of the cost (subject to a minimum fee of £250.00): this in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.
- 9.3 If required to act in the capacity of Company Secretary an additional fee of £250 per annum will be charged.
- 9.4 VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- 9.5 The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described at 9.1 above, are to be charged for on a fee basis to be agreed.

#### 10. COMPLAINTS PROCEDURE

- 10.1 The Manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors. Details of the procedure are available from the Institution on request.

#### 11. PROVISIO

- 11.1 In the event of any ambiguity or contradiction in the powers rights obligations or duties of the Manager, the provisions of the Leases, statute and guidance from any regulatory bodies shall prevail.