FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LAM/2020/0010**
Property	**:**	**Block 6, Ashley Gardens, Thirleby Road, London SW1P 1HG**
HMCTS Code	**:**	**V:CVP Remote**
Applicants	**:**	**Mr David Franses (Flat 71)** **Miss Jane Franses (Flat 76A)** **Mr Simon Franses (Flat 82A)** **S Franses Ltd (Flat 83A)** **James Ramsey (Flat 83B)** **Charles Ranby-Gorwood as LPA Receiver (Basement Flat)**
Representative	**:**	**Ms Stephanie Lovegrove, Counsel**
Respondent	**:**	**Block 6 Ashley Gardens Limited**
Representative	**:**	**Ms Katie Gray, Counsel**
Type of Application	**:**	**Appointment of Manager**
Tribunal Members	**:**	**Tribunal Judge Dutton** **Mrs S Redmond BSc (Econ) MRICS**
Date and venue of and Hearing	**:**	**Remote Video Hearing on 1 – 3 March 2021** **Reconvened for decision on 12 April 2021**
Date of Decision	**:**	**18 May 2021**

DECISION

COVID-19 PANDEMIC: DESCRIPTION OF HEARING

This has been a remote video hearing, which has been consented to by the parties. The form of remote hearing was V:CVP Remote. A face-to-face hearing was not held because it was not practicable to do so and the issues could be determined in a remote hearing.

The documents that we were referred to were comprised in a bundle of 1,507 pages together with additional documentation to which we shall refer to as necessary. The contents of these documents have been noted by us during the course of the hearing.

DECISION OF THE TRIBUNAL

1. The Tribunal dismisses the application for the appointment of Mrs Mooney as a Manager for the reasons set out below.
2. The Tribunal makes no order under section 20C of the Landlord and Tenant Act 1985.

BACKGROUND

1. By an application date 12th February 2020 Mr James Ramsey made application under section 24 of the Landlord and Tenant Act 1987 (the Act) for the appointment of a manager in respect of the property Block 6, Ashley Gardens, Thirleby Road, London SW1B 1HG (the Property). The Property comprises 19 flats and a number of the Applicants are all members of, or a company controlled by the same family. The long leaseholders are shareholders in the Respondent Company, Block 6 Ashley Gardens Limited which opposes the application.

2. The section 22 notice issued by Mr Ramsey is dated 28th January and gives 14 days for the Respondent to produce unabridged audited service charge accounts for the years ending 2018 and 19 and 42 days for a series of reconstruction works. In fact, an application was made to the Tribunal dated 12th February 2020 inside the 42 days period that was allowed for in the section 22 notice.

3. The section 22 notice complains of a number of matters, which are somewhat historical. For example, damp to Flat 71 was drawn to the freeholder's attention it is said on 7th June 2017 and the failure to maintain windows at Flat 83B has obviously been in existence for some time as a section 20 notice was issued on 6th June 2019. The allegation that the freeholder had failed to monitor licenced works seems to run from December 2019 and a failure to address other issues in the common parts is from 2018.

4. From the opening submissions made by Ms Gray on behalf of the Respondents, it appears to be accepted that works are required to the windows of Flat 83B and structural works to the chimney at the Property, of which there will be more in due course, and that accordingly we should concentrate our consideration on whether it is 'just and convenient' to make an order. In those circumstances we do not propose to trawl through the section 22 notice but instead to concentrate on whether or not the just and convenient elements of section 24 have been made out by the Applicants.

5. The hearing bundle provided for us as we indicated above contains over 1,500 pages and there is a supplemental bundle comprising 42 pages. Within the first bundle are witness statements of Ian McCaig who in fact did not attend the hearing, Jane Franses, Simon Franses and the statement from Alison Mooney. the proposed management appointee. Somewhat surprisingly perhaps there was no witness statement from Mr Ramsey who had been the original orchestrator of both the application and the section 22 notice. Further witness statements were relied upon by the Applicants, one from Barbara Swirski who is married to Simon Franses and is an in-house solicitor for S Franses Limited. Mr Simon Franses made two further witness statements and there was a witness statement from Kevin Rayner a previous managing agent and from Charles Ranby-Gorwood who is the Receiver for the Basement Flat. In addition, there were documents representing the Applicant's statement of case, the Respondent's statement of case and supporting documents, an Applicant's reply and the expert's report from Mr McAlistair and Mr Byers together with their joint statements.

6. The Respondents called Mr Darun Dhamija, Rachel Walker who is the present n-manager of the Property an employee of Brutons the managing agents and Mr Andrew Kafkaris who is a director of that company and who was put forward in his own stead as a possible Tribunal appointee.

7. We have read all these statements. We just pass comment on the length of some of these statements that have been produced, the more so as the Tribunal directions were that for example the reply lodged by the Applicants to the Respondent's statement of case should be brief, yet in the bundle ran from page 1,198 through to 1,213. For certain this case was not short of documentation.

8. We were able to read the various witness statements submitted to us as well as that of Alison Mooney and her draft management order. We also noted the contents of the experts' report as well as their joint statement.

9. At the start of the hearing, which began on 1st March, the question as to whether or not the section 22 notice was compliant was raised. It was Ms Lovegrove's view that if dispensation were required it should be given. The appointment of manager case has for some time been stayed whilst the issues concerning service charges were progressed. Although the repairing notice in the section 22 notice was 42 days, more than a year had passed when all matters could have been addressed but they were not. Her submission was that no prejudice was suffered by the Respondent if all points were considered and an application was made to consider any failings under that notice.

10. Ms Gray's response was that it was not possible to add to the section 22 notice but our view was that all issues could be raised in cross examination and dealt with in submissions and that the additional time that had passed since the section 22 notice and this application made the shortness of time for dealing with matters somewhat otiose. Furthermore, it was accepted by Ms Gray that the gateway provisions had been reached and that this was a just and convenient case.

HEARING

11. The first witness we heard from was Mr Franses who has made three witness statements. We do not propose to go through each witness statement on a line-by-line basis as they are there for all to see.

12. In initial comments following questions by Ms Lovegrove, he confirmed that service charges had been withheld but this was because it was not until March 2020 that audited accounts for earlier years had been produced, that there was substantial neglect of the building and an allegation that there had been misapplication of service charge funds to cover legal costs against some tenants.

13. In respect of earlier accounts, he was still of the view that the wrong percentages had been relied upon. In that regard we were given a list of the apportionments for the various flats in the building, and it was noted that save for Flats 83B and 83C, the apportionments that Bruton adopted, following on from the previous managing agents Warwick, were less than the lease apportionments, which if applied would enable a recovery of more than 100%.

14. Asked about the proposed works to the chimney stack, he thought that these were flawed, and that demolition was not required. He told us also that Karen Line had been intending to make a witness statement but had not done so. However, he had recorded an attendance note which she had approved but we did not admit. He told us also of the impending RICS investigation, which he was not happy with and he felt that the Applicants were being excluded from that.

15. He was then cross-examined by Ms Gray. She asked firstly about the service charge contributions, Mr Franses confirming that he had received the accounts 2017/18 but still thought the percentages were incorrect. Asked whether his arrears related only to the interim service charges set in 2020, he confirmed that he believed that to be the case and was asked why he had not raised the question of apportionments at the hearing in July last year. His response was that they had only come to light in the bundle received the day before that hearing, but he conceded that no appeal had been lodged to the Tribunal's decision.

16. He thought the request for sums on account was based on inaccurate section 20 notices and that the sums claimed were too high. The costs had been raised at a meeting in March of 2020 at very short notice and there had been no time for them to be properly considered. He accepted that there was no challenge made to those demands. He also accepted that the works could not go ahead unless there were funds, and he thought the figures in November of 2020 showed £130,000 in the account but it should have been substantially more than that. He indicated that the Applicants were not the only people withholding monies.

17. It was put to him that the majority of the leaseholders supported Brutons but his response was that ten or eleven were the same people who have issued proceedings against the Applicants in respect of the roof garden ownership.

18. Asked about his witness statement and whether he was angry that the control the Respondent had been taken from him and Mr Ramsey, he said he was not but found it a remarkable turn of events to have Mr Darun Dhamija appointed as an executive director.

19. He confirmed that he had met with Ms Walker of Brutons in December of 2019 and had given her a list of works that were required but it was clear to him that those works were not going to be undertaken. The view was that the Respondent had had ample time to comply with the terms of the lease. He was asked about the content of the section 20 notice issued on 19th February 2020 by the Respondent but was concerned that those works did not include the replacement of the windows to Flat 83B. He was referred to estimates but again expressed concerns that the contractors did not attend the flats to view them and that some sums were provisional only. It was put to him that he spent three years as director of the Respondent Company and accepted that there was long term neglect. Asked in particular about a quote from Stone contractors he felt that scaffolding would not be necessary to undertake the work. He was taken to a number of emails and it was put to him that it was clear that directors wished to pursue the works but were unable to do so because money was not forthcoming. His view was that the demands made in 2020 by Brutons were of an 'eye-watering' amount and that the costings should have been dealt with differently so that smaller items could be covered separately. His view was that works had been consulted in respect of Flats 71 and 83B earlier and that they should have stood alone and should have been underway.

20. The full external programme of works that had been costed over a number of years showed figures in excess of £654,000 being required and it seemed to him that they were a long way from being able to undertake that as funds were not available and his preference would be that they did it in steps rather than one ambitious package. His view was that Bruton were being over-ambitious and were a long way from having funds available to undertake the works. There was then some specific questioning concerning the fire alarm which appeared to have been attended to in January of 2020, this being one of the early concerns. A number of documents at page 1,058 onwards showed that works that had been undertaken in 2020 to address the fire system and emergency lighting. By 10th September 2020 it was accepted by Mr Franses that all necessary works had been undertaken in respect of fire issues. There was also concern about a lock installed to a means of escape when it should have been permanently locked but was capable of being opened and indeed had been left open resulting in the depositing of syringes and other unpleasant drug paraphernalia adjacent to the Property.

21. Questioning then moved on to the cracking to the chimney breast. A number of reports were before us on this point. On 6th January 2020 shortly after Brutons came to the Property, Hurst Peirce + Malcolm LLP (HPM) was instructed to undertake visual inspection and to comment, which they did in a report to be found at page 850 of the bundle running through to page 857. Under the heading Discussion, a number of possible causes of the cracking are put forward and those have been noted. In a subsequent letter of 6th March 2020, certain recommendations are put in connection with access to Flat 72, which are noted. Mr Franses accepted that the floor boarding and soffit board had been removed but did not accept that this was sufficient to disclose the issues which he believed had impacted on the cracking to the chimney. He wished there to be a report independent from those who have been involved in the granting of the licensing, which could review the works and find out whether or not those works in Flat 72 had caused the problem. His view was that if they were being asked to pay

£654,000 for works to the Property he needed a proper survey to be able to determine who was liable for the chimney works.

22. Mr Franses' evidence on this point became somewhat repetitive. However, the upshot is that the Applicants believe that the damage to the chimney breast may have been caused by internal works to the Property in particularly Flat 72 and they do not consider that it is necessary for a demolition of the whole of the chimney but rather part and in that regard, they rely on reports from Mr McAllister, which we will consider in due course.

23. In re-examination he was asked what he needed to be satisfied as to the condition of the chimney and the cause of the problems. He was concerned that HPM had approved works in Flat 72 and accordingly may not be independent. He was also relying on issues raised by the local authority's building control and posed the question as to why if the Respondents accepted their expert's report they were going to get a finding from the RICS. There apparently had been more than one application to the RICS and copies were included in the bundle. The latest had been signed by a Ms Jaffre, who was in opposition to Mr Franses and his family's claim for the appointment of a manager.

24. The next witness we heard from was Ms Barbara Swirski the wife of Simon Franses and the in-house solicitor for the S Franses Limited. In her witness statement she dwells on the meeting held in March of 2020 which she considered had been called too swiftly as only 14 days' notice was given. She considered matters of this nature should have been dealt with at a formerly constituted AGM and did not understand what a leaseholders meeting was meant to be. She recited emails she had with Ms Walker concerning the meeting at which it was indicated there would be no voting and then left for Maastricht but returning early to attend. She said it was only at that meeting that they were given the budget showing a tenfold increase in the usual service charges which she felt was unreasonable. She said that it was at this meeting that the problems with the Property were said to have been caused by inherent faults, which she said astonished her. She was she said disturbed to find that comments she had made at the meeting and the concern of others had not been recorded in the minutes. We were taken to a copy of the minutes held from the meeting of 9th March and also a meeting that Ms Swirski had with David and Sarah Franses on 9th March 2020 which listed correspondence and contact with Mr Kafkaris.

25. The next witness from whom we heard was Ms Jane Franses. She has made a witness statement. This appeared at page 145 of the bundle. After expressing her support for the application, she expressed the view that the Block should be returned to a reliable non-partisan management and believed that Ms Mooney was the person for this task. The witness statement went on to deal with a number of breaches and expressed dissatisfaction with previous managing agents and concerns about a forecourt area behind the building, which was accessible to rough sleepers and drug takers. This had been raised with the previous agents, but it appears that little had been done to attend to this. The remainder of the witness statement largely dealt with matters referable to the reasons for the appointment, such as unreasonable service charge demands and breaches of the RICS code. In examination in chief, she was taken to an email that she had sent to Rachel Walker on 4th January suggesting that a second opinion might be obtained because of the potential structural issues. This second opinion was

sought because in her view the Block engineer HPM had clearly given permission for structural walls to be taken down and she had lost all confidence in their independence. She confirmed that she had been paying service charges but not for the additional works because she thought they were unreasonable and not thought through.

26. In cross-examination it was put to her that the Respondents had always consulted with the residents. There had been consultation in March of 2020 concerning extra works and a notice of intention issued in February of 2020 with estimates in November of 2020. Her view was that she felt that they were just being given information and being advised as to what was happening but not consulted. In her view a number of notices were issued but nothing was happening. She had had conversations with Mr Kafkaris in the summer of 2020 after the notices had expired but nothing had come of that. She confirmed that no application had been made by the Applicants to the FTT about the major works. She was she said surprised that in the middle of a pandemic with people working from home that they would be considering undertaking major works. The taking down of a chimney would cause huge disruption and cost a lot of money but she felt that an independent expert, who should be a structural engineer, could be appointed to provide a definitive report. She sought a second opinion for peace of mind. It was put to her that in fact a second opinion had been obtained by Pole Structural Engineers in April of 2020, which was included in the bundle at page 881 onwards. This report, it was put to her, supported the steps taken by HPM. Her response however was that this was a company chosen by Brutons although she had no evidence that the directors had exerted any influence. What she was saying however was that it would be good to have an independent company chosen and was aware that the RICS had been approached, which she supported.

27. She was asked about the fire prevention and alarm system works that were carried out at the Property, but she thought there had been a big gap between March and July of 2020 although accepted that weekly tests were now being undertaken. She also reported that there were notices in the Property advising people how to disarm the fire alarm, which she considered were illegal. These she had reported to the cleaner. She did not let Brutons know of this. She thought a number of issues were directed through the porter. Discussions then followed about window cleaning, the previous agents having done this, and she accepted that in respect of the damp external issues would need to be resolved first. She confirmed that she was aware about the plans for external issues and had been asked to pay the costs associated therewith and was referred to the major works expenditure and budget at page 916 of the bundle. It was put to her that the works were now phased over a two-year period as a result of leaseholders' concerns but notwithstanding this her view was that separate involvement would be preferable and she wished to have somebody completely independent. She was asked whether she would accept the findings of Mr Mc Allister which she did not demur from, but her view was that she would accept the finding of the RICS surveyor as she found it difficult to make a judgement on the extent of works required.

28. Following on from the evidence we received from Ms Franses we heard from Mr Rayner, who was a previous manager of the Property. In his witness statement he told us that he had been a senior property manager for 30 years and until 2018

was the block manager in the employment of HML for the subject Property. His witness statement confirmed the existence of rising damp and rotten window frames but that upon the appointment of Mr Dhamija he said matters became different and that the directors focussed on personal priorities. He mentioned at paragraph 4 of his witness statement the difficulties that had arisen between the Applicants in respect of their roof gardens and the directors of the Respondent Company. The witness statement went on to complain that Mr Dhamija had been in contact directly with his branch manager Mr Oliver.

29. He indicated that as a result of matters and his advice apparently having been rejected, he decided his position was untenable and decided to resign. His final paragraph says, *"I had a long career but these directors' flagrant disregard for their maintenance and accounting obligations, sense of personal entitlement and hostility to any opposition was the worst I have experienced."*

30. In cross-examination he asserted that Mr Dhamija micro-managed the block but that the block itself was hostile environment with numerous in-house problems going back to his comments concerning the roof leases. He denied that HML were partly to blame as a result of the late delivery of accounts but was not surprised that the parties were before the Tribunal today.

31. Asked about his resignation he told us that this had occurred in March in 2018 and that he had retained the services of an employment lawyer to plan a route out. He told us he was still in property management dealing with a number of managing agents but did not know Ms Mooney. He conceded that there was an error in his witness statement in that the resignation occurred in July of 2018 and confirmed that part of the reason for his resignation was because of the untenable position in the block, that he put down to the board of directions. He was referred to an email sent from Mr Ramsey, Ms McCaig and Mr Simon Franses, which sets out the history from their point of view in respect of the roofing works, which he did not resile from. He did accept, however, that there had been disquiet from other flat owners. He also said that he had personally experienced bias from Mr Dhamija but when pressed on it could not produce any evidence.

32. He confirmed that he had been advised not to charge service charges for the roof to those lessees involved but seemed to accept that that was not advice given to him by Mr Dhamija.

33. He was then taken to an email from Mr Dhamija to Mr Chung the surveyor copied into Mr Oliver and others including Mr Rayner. in which mention is made of the lack of comment from HML concerning an inspection carried out by Kevin Day, the surveyor. Mr Rayner's response was that he had met Mr Day and had a lot of respect for him but could not put forward any explanation as to why HML may not have responded as thought appropriate by the Respondent. Asked about delays at the Property, in particular with regard Flats 83 and 71, his response was that he considered that the Respondent's prioritise licences to their own friends. It was put to him that an email sent by Mr Dhamija on 25th June 2018 clearly showed that he was being chased but he considered that these were piecemeal emails and disagreed that he was being chased. His view was that they clearly had no intention about getting the works done. He was referred to a further email of 23rd July 2018, this time sent to Mr Oliver, which lists a number of outstanding tasks that need to be completed. Mr Rayner's response to this was

that there was no money to get the works done and that Mr Dhamija was merely sending the emails to give the impression that he was doing all that was needed. It was put to him that he was not performing his obligations properly, which he denied. He considered that he did a good job at the time and that he had got on well with Mr Dhamija but that he was obsessed with controlling the block. He resigned in protest not because of employment difficulties. It was put to him that this might not be correct because at page 1,325 of the bundle was an email from Simon Oliver dated 19th July 2018 which indicated that they accepted that the Respondents would be engaging in new managing agent and *"we at the same time are allowing Mr Rayner to depart our employment tomorrow."*

34. The next witness we heard from was Mr Mc Allister who had been retained as an expert by the Applicants. His report was to be found at page 1,413 of the bundle and is dated 2nd November 2020. We have read that report.

35. He confirmed at the hearing that his inspection had been limited to the external arch and roof and common areas and inside Flat 71. He had no access to Flat 72 and had no idea what enquiries may have been made to enable him to have such access. He was referred to reports by HPM and in particular the comments concerning the internal appearance of Flat 72 and at page 855 of the when it is recorded that the project manager advised that there had not been any structural work in and around the chimney breast in that flat. The report goes on to say it may be worthwhile removing the plaster and render around the chimney breast to inspect the brickwork. In a subsequent report from HPM of 6th March 2020 it is confirmed that plaster and render removal at Flat 72 did not appear to happen but that floor boarding and the soffit board in the fireplace location were removed for their inspection which led them to believe that there was no cracking in the chimney breast.

36. Asked about this Mr Mc Allister's view was that the removal of the floorboards and soffits would not give good enough access. He had not, however, asked for a detailed specification for the works carried out in Flat 72. He considered that a referral to the RICS should be sufficient if a thorough investigation was permitted and possible forensic investigation.

37. Asked on his view concerning demolition he said he did not think it was necessary. He accepted that the lower section needed detailed work, but demolition was only necessary if it was a catastrophic failure. He was somewhat dismissive of the views of HPM concerning conclusions and recommendations contained in their report dated 6th March 2020.

38. Asked about the ten-year maintenance plan he thought it was inappropriate to lump the works into two years and that he did not think a great deal of thought and attention had been given to it. These answers were given during examination in chief by Ms Lovegrove. They went beyond the extent of his written report.

39. He was then cross-examined on the questions recorded in his report that had been put to him by the Applicants. The first was the condition of the windows in which he had said there was some danger of a risk of glass falling but that there had been some ad hoc temporary repairs and his view was that there did not appear to be any immediate risk of failure.

40. On question 5 concerning rising damp he said that he had found damp in the flat and that it would appear the damp course had become defective.

41. On the question of planning applications and party walls he said that he can give legal advice under the Act. He considered he is entitled to do so both on the application and the Act and give his opinion accordingly. In response to question 9 concerning the compression of external work schedule into a single year, his view was that it should not be and that it was unreasonable to do so.

42. In respect of question 10 he said he had read and concurred with Mr Antino's report although he had only carried out an external inspection. Asked whether Mr Franses had made enquiries about access to Flat 72 he said he did not know. He confirmed that he had not carried out any monitoring or ground penetration and had simply relied on his inspection. He conceded he was not a structural engineer but agreed that reconstruction of the lower levels was necessary and that there may be some defects in the upper floors but those had not been identified as resulting from the chimney and did not justify the rebuilding of the totality. His view was that the chimney stack did not fail for no reason when it had been standing for 120 years or more. In his experience as a surveyor dealing over the years, it did not indicate that the chimney stack would fail as there were no defects in the upper floors. He confirmed that he would be comfortable in issuing a report without undertaking a thorough investigation. He did not consider that citing poor workmanship was sufficient as he considered there were other causes.

43. Asked about his response to question 17 where he alleges that the managing agents have not discharged the duties, have been incompetent and potentially negligent, he said he preferred clearly ring-fenced questions that he could answer. He did however confirm that he would not expect to have any direct contact with the Respondents and had been told that access was not permitted. He did mention that Mr Franses had covered an enormous number of topics and he had been initially asked a number of vague issues but had sent it back and asked for some specificity which he thinks Mr Antino assisted with in framing the questions. He did however confirm at the end of his evidence that rebuilding the lower portion of the chimney would give added support to the upper.

44. We then heard from Mr Charles Ranby-Gorwood who had come to the proceedings somewhat late in the day. His witness statement was in the bundle at page 1,282 and confirmed that he was a Law of Property Act receiver appointed by HNW Lending Limited who had entered into a loan agreement to lend Ashley Gardens Develco Limited funds secured by way of a legal charge on the basement flat at the block. His witness statement referred to the damp, which was inflicting the Property, which he first became aware of in January of 2020 at the same time as tenants that had been occupying under an AST moved out. He was concerned that the scaffolding that had been put in place impeded access to the flat which was no longer usable. Access was now from the main entrance down a staff/storage corridor, which was unappealing to any buyer or tenant. The problems with entry, one room being uninhabitable and rising damp meant that the flat was not presently lettable. He indicated that he was unhappy about a report obtained by Brutons in respect of the damp and arranged for a further

report to be obtained, which indicated that there was moisture consistent with rising damp.

45. His witness statement went on to deal with his involvements with Bruton and his concerns, which he considered showed neglect and a mis-prioritising of works. He said that he believed there had been breaches of the lease, excessive and unreasonable service charge demands, breaches of the RICS code and errors in accounting.

46. In examination in chief, he confirmed that he had indicated to the Respondents that his company was willing to finance the works as were set out in the report that he had obtained in November of 2020. This was on the basis that the costs that were incurred were deducted from the service charge cost. He was told that insurance would not cover the work but apparently loss adjustors were still involved and that he was at the moment trying to pursue an insurance claim. He confirmed that he did not lightly join as an Applicant and that he would support an independent manager to resolve issues. He was referred by Ms Lovegrove to a declaration in the High Court in a case between Mr Ramsey and the Respondents in July of 2019 when a declaration was made in terms set out at page 349 of the bundle. He said he had not seen anything like this before but that he had not seen background papers nor spoken to Mr Ramsey.

47. In cross-examination he was asked whether the damp was in the programme of external works and whether he accepted Brutons were in an advance stage of serving notices. He did accept that the Respondents needed to be appropriately funded and had not made any representations in respect of the section 20 consultation. He accepted that the Respondent was entitled to and required financial contributions, and that they had reduced the amount required. He was of the view that the Tribunal should make a decision on this case before any further funds were released by him. He said that he had been asked for some £40,000 of which £20,000 had been paid but the balance was held back. He was asked why a copy of the report he referred to in his witness statement had not been produced but he said he was willing to do so but had not. As far as the court order that was referred to, he accepted that this made no findings on the conduct of the Respondent and that he could see there was conflicting advice, which he wanted to avoid. He accepted there was no evidence that the experts had not carried out their duty in accordance with their professional obligations.

48. This concluded the evidence of the Applicants and for the Respondents we heard first from Ms Walker who had made two witness statements. The first was dated 23rd September 2020 and ran from page 937 to 946 of the bundle and her second witness statement running from page 1,403 through to 1,411 was dated 26th January 2021. We noted all that was said in these witness statements.

49. She confirmed that she was the senior estate manager for Bruton Street Management (BSM) and was the principal manager of the Property. BSM had been appointed on 29th November 2019 taking a handover from the previous agents Warwick Estates on 1st December 2019. A site inspection was carried out on 19 December 2019 and then of course Covid hit. She did say that at the time of their handover there were service charge arrears and that the Applicants accounted for the majority of this, collectively owing £260,552.20. She confirmed that she had only witnessed the directors behaving appropriately in

connection with the granting of any licences and that she instigated a major works programme there having been no previous plan in place for some time under previous agents and boards of the Respondents.

50. Her first witness statement went on to make comments on the matters raised in the proposals by Ms Mooney and we have noted those. She noted that Ms Mooney's proposals expected the chimney works to be undertaken and the damp dealt with between late Spring and Autumn of 2021, which had been in line with the arrangements that BSM had considered. This is not withstanding that they have had to deal with two Tribunal applications in that time. Her statement then went on to deal with the allegations that there had been breaches of the RICS code which she responded to in detail setting out steps that had been taken. She opposed the appointment of a manager as she considered BSM had a programme of maintenance and works in place and should be seen through to the completion for the benefit of the block and of the leaseholders.

51. Her second witness statement dealt with allegations concerning self-dealing and partisan behaviour on the part of the directors, which she said she had not seen. She accepted that the Applicants wished to see the resolution of works to their flats, which was legitimate and that she had sought to address these issues which pre-dated BSM's involvement. This statement also went on to deal with a number of matters arising from service charges and apportionments, meetings and inspections and the works to the chimney. There was also a detailed response in respect of the external decorations and planned maintenance programme and the intentions in respect of the windows of Flat 83 and the damp at Flat 71.

52. In examination in chief, she confirmed that the seven flats owned by the Applicants were now in arrears of service charges in the sum of £372,374 and that there were three other flats in arrears of £98,500, those being on payment plans and two should have been paid by the end of March. This lack of funding had caused the delay to the works. She confirmed that a referral had been made to the RICS and this was included within the papers before us. This had been undertaken unilaterally in June 2020 but the RICS said they needed a second party and initially this was to be Mr Franses, but he came back in October of 2020 with revised wording and nothing further was heard. In the end they approached a Mrs Jaffre who made, with the Respondent's support, the further application in late 2020. It was considered that an RICS report was required to allay the concerns of the Applicants and that is presently in hand. She confirmed that as far as she was aware the owners of Flat 72 and 74 had agreed access.

53. On Mr Dhamija's micro-management she said that she did meet with the directors regularly and that he was the point of contact but did not consider it to be micro-management.

54. She then listed the works that they had undertaken including the repair to the lift, fire prevention works, some roofing above the common parts and the fifth floor, further works to Flat 72 including investigations and a structural engineer was to be involved to carry out an intrusive investigation in respect of Flat 72.

55. In cross-examination she was asked whether the directors of the Respondent were in arrears and she said they were not. All directors had made payments on

quarterly demands and whilst there may have been some reminders it was nothing more than that. In her view the delay to the major works was the non-payment. Asked what steps she took to recover arrears she said that reminders were sent and a letter before action and then proceedings, if necessary. She was asked some minutiae about the year-end accounts and the inclusion of window cleaning, which were to be removed, as were some legal fees. She confirmed that she took instructions from all directors and that the minutes of the meeting in March of 2020 had been prepared by her but signed off by the directors. Asked about the inaccuracies in those minutes it appeared that she accepted one person had been omitted but she had no record of any objections concerning the external decorations and that she had recorded the minutes at the meeting. She accepted that Ms Swirski had said they were incomplete, and they had been amended at her request.

56. Asked about the meeting in December 2019 with the Applicants she said that Mr Franses had raised issues and she had taken notes, which she did not produce, and also took photographs, again not produced. Notice of intention to carry out works was issued on 8th January 2020 and she confirmed that the Applicants had been provided with a copy of the HPM report. She was asked whether the report made reference to demolition. She considered the reconstruction could involve demolition, but she would not comment on the costs. She was questioned about the length of time between the notice for external repairs given in February of 2020 and the estimates which were not available until November of 2020. Her explanation was that they had been drawing up specifications and putting together tenders. Asked about the external works she told us she had written to Mr Franses and Mr Ramsey to confirm that external decorations would include the windows to Flats 83B and the damp at 71. She was of the view that the windows were demised to the leaseholders except the outside and did not know what the cause of the problem was at Flat 71.

57. Asked why she had not sought dispensation from the consultation requirements she said that she was awaiting the outcome of the RICS surveyor's report and could not proceed until that was to hand. It was put to her that the Applicants were concerned that HPM were involved in the grant of the licence to Flat 72. Her response was that they had not been heavily involved and that it was Day Associates who had overseen the licences.

58. She confirmed that a welcome letter had been sent out for the meeting in March of 2020 but that the budget was presented to the directors two weeks before the meeting and at that meeting. The budget itself was issued on 25th March. She did not recall the leaseholders asking for more time to raise funds but in any event, she concluded that the second opinion would be welcome as a result of matters raised at the meeting and this was sought from Pole.

59. It was put to her also that she knew there were arrears when she took over the management of the block but she did respond by saying that the costs for the lift repairs had been paid quickly. She also confirmed that she had had the meeting with the directors and with Mr Franses and Mr Ramsey on the understanding that the state of disrepair was such that all parties wanted to go ahead. The leaseholders she said were keen to proceed and therefore were aware that funds would be required. It was suggested to her that the amount sought following the meeting in March was an "eye watering amount." There was no reserve and it

was considered that the works should be undertaken if possible, in one go. This was approved by the directors and presented at the March meeting.

60. She confirmed that she was aware that there was an issue with regard to Flat 71 and she informed the leaseholders that the works would be included in the forthcoming tendering in the January 2021 specification.

61. As to the occupancy of Flat 71 during the works she said she would take the advice of a building surveyor. It was put to her that it was only as a result of these proceedings that matters had been progressed. She said the section 20 notice had been issued in February 2020 at the same time the application was made but that she would have expected a three-month handover from the time that they took responsibility for the building, which they did not get. She said it had been agreed with directors that the works would hopefully be completed as one project and it was planned to proceed with the external decorations in this current year.

62. Asked about the report from Mr Ranby-Gorwood she said she had this in August 2020 and attended with Mr Day in September of 2020 and had found an area of damp.

63. Questions were then raised concerning the fire extinguisher and the apparent instructions to silence the buzzer, which she knew nothing, but she confirmed that by March 2020 the works had been completed. In respect of the chimney, she confirmed that the insurers had been notified and the loss adjuster attended but it appeared that the problems with the chimney breast were not covered by insurance. She believed they did have access to Flat 72. She was referred back to the HPM report and at page 858 the works that were required in respect of the chimney breast at Flat 72 she confirmed that in her understanding the plaster was not in place around the fireplace at the time of the report. Any licences in respect of works were overseen by Day Associates. Asked whether licences would be provided to the RICS she said no documentation had yet been produced but they would be when requested. She was referred to the Pole report, which was again included within the papers before us and was dated 6th April 2020. This report was supportive of the findings of HPM. It was suggested, however, that Pole knew they were coming in for a second opinion and this may have influenced them. She was then asked further details concerning the appointment of the representative from the RICS, planning issues and whether she would be able to recover service charge monies when there were question marks hanging over the recovery. She did point out that no application had been made by the Applicants to establish reasonableness. She said they were awaiting the RICS report before they took the matter further.

64. There then followed questions concerning the funding of the works. We were shown a sample check of demands showing the quarterly sums requested of the owners of Flats 72, 73 and 83B which was at page 359 of the bundle and her response was that the Applicants knew works were needed and that they would have to be funded. She confirmed that payment plans were available if they were requested and that most of the leaseholders at the meeting in March agreed that the works needed to be done. Objections were raised about the scale of the sums demanded but notice of intention was issued before seeking funds and there were no observations raised. She denied that the works to Flats 71 and 83B had been added to the satisfy the Tribunal and that they had not been "thrown in at the last

minute." She confirmed that the works for Flat 71 and 83B were in the first phase and would have been carried out this year if funds had been made available. Further questioning ensued concerning funding of the work and demands that were made. She confirmed that the Applicants knew by September of 2020 that they were not being asked to pay the whole amount as the September was a quarter demand only.

65. On the question of the roof garden, she said she was aware of a dispute concerning air conditioners but she denied that she had reviewed any of the licences in respect thereof. She was asked why solicitors had been involved and she said that their involvement was because of the Tribunal.

66. She confirmed that she could understand why there were concerns about the works to the chimney breast but could not understand the Applicants' concerns about the day-to-day management.

67. In re-examination she confirmed that if it was necessary to accommodate the occupier of Flat 71 that would be done. She confirmed also that planning/conservation consent would be obtained and that if Party Wall Act approval was necessary that would be done.

68. Her evidence was followed by that of Mr Dhamija. He had also provided two witness statements, the first at page 933 running through to 935, simply confirmed that he was a leaseholder of Flat 73, that the Respondent was a lessee-owned company run by the Board and that the Board of the Respondents were not property professionals and employed managing agents. He confirmed that it was the Board that made the decisions and any alterations or licences required were only granted after advice was sought by the Respondent and BSM from professionals.

69. The second witness statement was a longer affair and was at page 1,289 through to 1,299. This responded to the allegations that there had been some neglect and wrong prioritising of matters, reference was made to previous agents and in particular the comments made by Mr Rayner and Ms Lin, the latter of whom did not attend the meeting and merely appeared as a result of Mr Franses' notes of a conversation. He denied any allegations made and expressed surprise and shock at the contents of Mr Rayner's witness statement, which he responded to in some detail.

70. On the question of the windows at Flat 83B and the damp in Flat 71, he said it was unfortunate that there had been a delay but denied that this was intentional or purposeful neglect. He confirmed that he had chased for a resolution and it was on the recommendation of the respondents' advisers that matters had been grouped together as a single project. We noted all that he said under the heading General Maintenance and Repair, and in respect of the roof gardens he confirmed the concern appeared to be that the construction of the roof gardens meant that there was no access to the flat roof lying thereunder and this may affect ongoing responsibilities.

71. In respect of grants of licences and dealing with permissions he confirmed that under the current board they follow the same procedures with applications for

work and alterations and rely on professional advice. His witness statement strongly refuted allegations of self-dealing and a partisan behaviour.

72. At the hearing he corrected a definition given to him as Executive Director. He said the correct position was that he was Chairman and was the nominated contact. He had no executive authority just got information and passed it on to the Board for efficiency purposes.

73. In cross-examination he was asked why Mr Ramsey was removed as a director. He said that he was removed by the majority of shareholders in 2018. He had been a director with him for about a year. He said that he wanted managing agents to take more control and advised that the lessee meetings were a better way of dealing with it. There was he said as many as four managing agents before HML which gave a lack of consistency in approach. Asked about the minutes of the March 2020 meeting and inaccuracies he said he did not know what those were. He said he was impressed with Ms Walker taking the meeting and the notes and that she did a good job. The disputes concerning works carried out in his flat and Flat 71 were now with lawyers. He had little to say about the declaration in the High Court by Mr Ramsey. But again, this matter was now with solicitors.

74. He thought there was a claim in the High Court about the roof and the licence issues as well as health and safety matters. But this was not being brought by the Respondents rather a group of leaseholders. There was a query concerning the licence for the works which appeared to have been granted by Mr Ramsey to Mr Franses and he had been advised that service charges should have been claimed in respect of the roof area since 2012 but had not been. It was his intention to get proper advice and proceed accordingly. Insofar as works to his flat were concerned his recollection was that these had been authorised in 2016 before he was a director. He told us that HPM had first been brought in by Mr Ramsey and Mr Franses and were involved in all licences and continued to work with them. He said he knew Day Associates had submitted reports but there was no witness statement from them. He thought that HPM were very diligent and thorough and had done great work. Insofar as the chimney works were concerned, he considered that HPM had established the right road with the confirmation from Pole but nonetheless they were proceeding with the RICS appointment to ensure that the Applicants were satisfied.

75. Asked about access to flats he said that Mr McAllister had not asked for or wanted access. Mr Antino had asked for access and he accepted there were rights under the lease and legal advice was taken. His view was that Ms Walker had handled the matter well considering the needs of all whilst interpreting the advice given to her. He confirmed that they had been made aware that the leaseholders were concerned about HPM which is why a second opinion had been sought from Pole.

76. As to the future he confirmed that it was the Respondents wish to care for the building although none wanted to spend more that was necessary. His view was that the evidence appeared to be that the surveyors did not consider that the works at Flat 72 had caused the problems. He confirmed that it was BSM who had advised the Board about rolling up the external decorations and the damp works but there were many pressing issues to handle. He accepted that the

occupant of 71 was important and should not be living in these conditions for the length of time that he had. He reminded us that in 2017 Mr Ramsey was on the Board as Mr Franses had resigned and Mr Ramsey subsequently resigned in 2018. He confirmed that in his view he had always wanted what was best for the building and that everyone would be getting what they wanted. He wanted it to be a better place for people to live and that all shared concerns about the building.

77. On re-examination in respect of access to Flat 72 we were referred to a letter from Trowers Hamlins of 22nd June 2020 which attacked the bona fides of Mr Antino but did say in that letter that with regard to the alterations to Flat 72 there was no objection to consent being obtained from that leaseholder and the suggestion as made to Mr Franses that he contacted them directly.

78. We then heard from Mr Byers who like Mr Mc Allister had prepared a report. He set out the documents that had been provided to him and like Mr Mc Allister had undertaken an inspection and had been asked to consider the cause and proposed works to demolish the chimney, the 10-year maintenance plan and the windows and damp. We noted all that was said. His report did then go on to address the questions that were posed of Mr Mc Allister and again we have noted the replies thereto.

79. In the joint statement produced by both Mr Mc Allister and Mr Byers there are a number of questions where agreement is reached. It is accepted, for example, that the windows needed attention and that a lack of maintenance and redecoration in the past has contributed towards their decline. Indeed, there appeared to be little differences of opinion save with regard to the damp which was included in the Day Associates specification in August 2020 but not mentioned explicitly in the notice of intention and also the need for the occupier of Flat 71 to vacate. Although both experts appeared to agree it would be prudent for damp treatment to be undertaken whilst the flat was empty.

80. There is disagreement as to whether or not a party wall agreement would be required. There is also disagreement as to the compression of works into a single year under the ten years maintenance plan and whether or not the conclusions in Mr Antino's report are correct. Mr Byers was unable to state which of the alternative structural repair options were correct. There is disagreement as to the section 20 notice and whether this needs to be re-served or not. There is also disagreement as to whether planning will be required or whether Conservation Area consent would be required. They did not agree on the impact of the Party Wall Act nor on the managing agents' discharging of duties. Both agreed that the common parts of the Property had been neglected but no agreement was reached as to the opinions of the managing agents' actions and responsibilities. He was asked about the report from HPM at page 858 concerning the removal of plaster. He confirmed he would have expected them to have undertaken the work recommended and confirmed that the soffit board would block access the chimney. He was asked about the maintenance plan and the carrying forward of costs of works which he thought was unusual and conceded it was a long time to delay works when they appeared to have been brought to the Respondent's attention in 2017.

81. We then heard from Ms Mooney, the proposed manager, who had provided a witness statement and a draft management order. In her statement she confirmed fees that would be charged and her requirements in respect of the management.

82. She was asked in cross-examination whether she had read the lease. She confirmed she had briefly looked at it, but not really read it. She confirmed that if she was appointed, she would act impartially but was asked why in her management agreement she proposed to review all licences carried out for alterations to individual flats in the last six years. She considered there was cause to deal with the review of the licences. If proceedings were to be issued, they would not be without legal advice. She accepted that the terms of a draft order were just that. It was in her view that it was important to sort out problems between the parties for the good of the relationship. She thought that the present position was biased as there appeared to have been refusal to give access or the things were not disclosed. She confirmed however that she had only spoken to the three Applicants and was aware that some supported and some did not support her appointment. She pointed out that only one tenant needed make the claim and, in this case, more than one was in support.

83. Her inspection of the Property indicated it was in a shabby condition. She was asked what would happen if she was appointed and said she would review all contracts and would contact the incumbent managing agent. She had not however seen the PPM plan but was interested in her own plan not what had been undertaken before. She confirmed that if matters had been well progressed, she would not necessarily make changes. She thought that she could well work alongside the existing surveyors involved and would not want to repeat works unnecessarily. She thought that she would need a month to establish what was proposed and knew Mr Byers, having regular contact with him and his company in the past. The maintenance plan would be reviewed. She said she had not read the HPM or Pole reports but had seen nothing to suggest they had not acted professionally. The RICS would provide a third opinion and would continue with that process. She would not say that she thought BSM were incapable. She was then asked about the terms of her management order and her experience. Her view was that the status quo could not go on and she thought that BSM were the casualties in this. She gave us information of her involvement with other properties and that her fees would be fixed for the period, with no annual increase. She told us that she would retain the porters.

84. As a final adjunct to the matter due to availability issues Mr Kafkaris gave his evidence last. He had made a witness statement proffering himself as an alternative manager for the Property in place of BSM. He confirmed he would accept the appointment and set out details of his management experience, which was over 20 years and his CV in respect of such management in that time. A management plan was attached as were other details.

85. He confirmed that he had not been appointed as a Tribunal appointee before and that he was the sole director of a company having a team of 14 employees dealing with estate management. He confirmed that his company had not inherited a reserve fund but believed that reserve funds and planned maintenance arrangements were important. Asked why he thought he would be required to be a Tribunal appointee he said it was merely in response to the application that had

been made. Personally he did not think that a Tribunal appointee was necessary. There was in his view no argument that Ms Walker was impartial and that she had managed the Property on the instructions from the directors and in accordance with the lease and the code of practice.

86. At the conclusion of the hearing, which went into the end of the third day, we agreed that Counsel could make submissions. The first would be by Ms Lovegrove to which Ms Gray would respond and Ms Lovegrove would have the right of a short reply. These matters were to be concluded by the end of March.

87. We did indeed receive the submissions from both Counsel. They are lengthy and both parties have had the opportunity of considering them and responding to same save and except the Applicant's reply to the Respondent's closing submission.

88. The Applicant's first closing submission under the heading 'Just and Convenient' suggested that the submission made in the Respondent's skeleton argument that we should be considering the future, was inappropriate. It was Ms Lovegrove's view that the past conduct was a better guide to a person's future conduct than promises made. The concession that the gateway ground had been made did not it seem extend to the damp in the basement or the unreasonable service charges found by the Tribunal in July of last year. It is said that the block is mired in conflict, that BSM has perpetuated mistrust, that the Applicants have acted reasonably, and the position is such that only an independent manager can take things forward. Reference is made to matters which give rise to the Applicant's concern in particular leaseholder conflict concerning licences and the disagreement as to the works required to correct the problems with the chimney stack. Reference is made to the High Court declaration sought by Mr Ramsey and the apparent actions of BSM having compounded the Applicant's mistrust. This includes an apparent refusal to disclose works carried at Flat 72, the referral to the RICS which was not it is said conducted in the spirit of openness and transparency, the inaccurate minutes as suggested by Ms Swirski and the reliance placed by BSM on lawyers to deal with matters. It was also suggested that the statutory consultation was ineffective and that BSM lacked vigour in consideration of the HPM and Pole reports. The question of apportionments was raised and an allegation that BSM had failed to show openness and transparency in dealing with matters.

89. In contrast it is said that the Applicants have acted reasonably in their dealings with the Respondents and are justified in the approach they have taken. It was said that the withholding of service charges was not unreasonable, that their interests were being side-lined and the only way to resolve this was to appoint an independent manager. The submissions went on to deal with the Respondent's skeleton argument and we have noted the eight points made. We note also the comments concerning the proposed managers.

90. In response Ms Gray in her closing submission asked us to consider her opening skeleton as well as the decision of the Tribunal in July of 2020. A preliminary matter was raised concerning the Applicant's initial intention to seek leave to amend the section 22 notice which did not proceed, and Ms Gray set out the test to be applied in determining whether or not an appointment was made largely by reference to the service charges and management textbook.

91. On the question of evidence, she reminded us that although there were seven Applicants, we heard from only four of them. Mr Ramsey who was the author of the section 22 notice and indeed made the application did not provide evidence. A witness statement was provided on behalf of Ms McCaig but Mr McCaig did not give evidence and no explanation was given. Mr Ranby-Gorwood's evidence she submitted was based on what he had been told by others and his concerns regarding litigation between Mr Ramsey and the Respondent about which Mr Ramsey gave no evidence. We were also reminded that Mr Franses and Mr Ramsey were members of the Respondent's board of directors until relatively recently and it was submitted that in the manner of Mr Franses' evidence and his witness statement that he held a grievance against the Respondent. In addition, Mr Franses and Mr Ramsey and Ms McCaig are all roof garden lessees, which has been the source of much controversy. Accordingly, it is the Respondent's submission that the application is motivated by personal grievances and a desire to underdo the work that has been done since the current board was appointed in 2017/18. Ms Gray then went on to deal with the evidence that we received from Mr Franses and from Mr Rayner and to contrast those with the evidence we received from the Respondents.

92. As to the expert evidence it was suggested that Mr Mc Allister did not understand his duty to the Tribunal and attempted to answer questions not within his expertise. She also reminded us that Mr Mc Allister had given a good deal of evidence under questioning from his Counsel, which was not within the report and therefore no weight should be given to those matters. Reference was made to the content of the section 22 notice and in particular the fact that remedies were sought within 14 days and 42 days and the response listed the Respondent's replies to those matters. It was suggested in the submission that it was neither just nor convenient to appoint a manager and a list of steps undertaken by BSM was set out.

93. Reference was made to the works required to the chimney stack, but it was put to us that it was not on this application a matter for us to determine which method of repair should be adopted by the Respondent. Reference was also made to Ms Mooney giving an indication that she would take exactly the same approach as BSM had done but that she had appeared to allow the Applicant's request for certain matters to become included in her draft order, in particular the right to review licences.

94. In conclusion Ms Gray said it was not appropriate for the Tribunal to appoint the manager for the reasons set out therein and that it should be dismissed. On the question of section 20C it was left for the Tribunal to make that decision and reference was made to the amount of documentation produced and late applications for adjournment, which resulted in the hearing being delayed until March.

95. Ms Lovegrove was given permission to file a brief response to this, which she did. She confirmed that there was no amendment sought to the section 22 notice and the reason for Mr Ramsey not having given evidence was that there was no indication given by the Respondents that they wished to cross-examine him. She also sought to clarify that Mr Franses' cessation of his directorship was because he had resigned. Much is then made of Mr McAllister's evidence and the

attempts to undermine him. It is denied that at any time the Applicants had attempted to thwart the RICS process. It is said that Mr Dhamija in his role as a director did nothing to ensure the works were carried out to Flat 71 and 83B and that Ms Walker had aligned herself with the Respondent's objectives and interests. Further reference was made to the RICS process of which it is said the Respondents remained in the dark. She sought to explain the Applicant's withholding of service charge monies and that whilst the appointment of a manger, it is said, would not influence the litigation between the lessees it will provide an impartial steer for the management of the block. Finally, it was agreed that the section 20C application will broadly follow the outcome of the application.

FINDINGS

96. We remind ourselves that we are a problem-solving jurisdiction and one of those areas where problems can be resolved is under section 24 of the Landlord and Tenant Act 1987. We equally accept that this is a somewhat draconian step to take.

97. It is quite clear that this block does have difficulties in the personalities who occupy the flats. There appears to be, in the Applicants' case, several family members who have joined together to challenge the effectiveness of the present manager and the directors. We are not aware of any application to remove any of the directors and indeed Mr Franses the main witness for the Applicants indicated he had not wish to become a director.

98. We were concerned that Mr Ramsey who appeared to be the originator of the section 22 notice and the application to the Tribunal decided not to give evidence. It seems to us it is a poor response to suggest as was that he had not been asked to be in attendance so that he could be cross-examined. There was no witness statement to cross-examine him upon. In addition, also as was pointed out by Ms Gray not all the Applicants attended to give evidence.

99. This case was not short of paperwork. The initial bundle is over 1,500 pages long with a supplemental bundle of another 42 pages. Add to that the skeleton arguments and the written Submissions at the end of the day and there is no doubt in our minds that this matter has been fully ventilated.

100. In this case we are satisfied that it is for us to decide whether it is just and convenient to appoint a manager under the provision of the 1987 Act. Ms Lovegrove for the Applicants, whilst accepting that the Tribunal should be most concerned for the future should nonetheless not be blind to past breaches that are highly relevant. She said it is the Applicant's submission that past conduct is a better guide to a person's future conduct than any promises advanced in the course of an application and the gravity or duration of past conduct may be such that it merits the appointment of a manger.

101. Let us deal with those points. BSM did not come to this Property until the end of 2019. Prior to that other managers were involved, and Mr Ramsey and Mr Franses were directors of the Respondent Company. It is patently clear to us that many items of disrepair in respect of this Property must have been known during their watch as directors of the Respondent. The state of the windows and we

would venture to suggest the damp that the Property suffers from, have not arisen overnight. It is accepted that same may not be said for the problems with the chimney breast, but we will refer to that in due course. Accordingly, it does not seem to us that BSM can be tainted with any historic conduct. They came to the Property in December of 2019 and as is set out in Ms Gray's skeleton at paragraph 35, it is quite clear that several steps were undertaken by Ms Walker and BSM in that period of time. It should also be borne in mind that the section 22 notice is dated 28th January 2020 barely a month after Ms Walker met with Mr Franses and Mr Ramsey and the application itself was made on 12th February 2020. Hardly it seems to us an easy start for Ms Walker in her role as manager of the Property.

102. We should then consider the evidence that we received from both parties. The main evidence came from Mr Franses. Whilst we have not doubt as to his honesty, we were concerned that he found it difficult to answer questions succinctly as evidenced by the fact that permission was given to him to file a brief third witness statement which as we have indicated was anything but. He is one of the flat roof owners and it is not doubt that this has been the source of much vexation between lessees at the Property. We cannot help but feel that part of the driving force behind the wish to appoint a manager is that there is this underlying simmering current of discord in connection with both the licences granted for the roof and licences granted for internal works to flats. Indeed, the inclusion in Ms Mooney's draft management plan of the ability for her to go back six years to consider licences is in our view not likely to engender good will between the residents.

103. The other two witnesses we should refer to for the Applicants were, Mr Rayner and Mr McAllister. We found Mr Rayner an uncompelling witness. His sole raison d'etre seemed to be to attack Mr Dhamija. He referred to having bias shown against him but could give no indication as to what that might be. There are numerous emails which have been sent which appear to indicate that Mr Rayner did not fulfil his obligations as well as he should have done, which may have clouded his response in his witness statement. Be that as it may, he was the managing agent for a period of time when it does not seem that any of the works that are now being contemplated and for which there has been much discussion, were in fact pursued by him.

104. The other witness is Mr McAllister. We tend to agree with Ms Gray's assessment. We are not quite sure what evidence he was intending to give. The report of Mr Antino was not produced to us. Mr McAllister made no more than a limited inspection of the Property yet felt able to disparage the reports of both a HPM and Pole who had carried out detailed inspections and had carried out a thorough review. It is not for us in this application to decide what is the correct method by which this chimney is repaired. It certainly needs to be repaired. Whether it requires a complete demolition or partial reconstruction we cannot say nor do we intend to venture into that area. The intention on the part of the Respondents to seek an appointment from the RICS to resolve the matter once and for all seems to us to be a sensible way forward, given the polar opposites that appear to have arisen in connection with the works required to the chimney. It does seem to us that what works are undertaken rests with the Respondent and not the Applicants. They have made no challenge to the estimated costs, which they clearly could have done under section 27A of the Landlord and Tenant Act 1985.

Instead, they have sought to rely upon Mr Mc Allister's report which we did not find terribly helpful. We also agree with Ms Gray that he tended to wander into areas that were not within his remit.

105. In contrast for the Respondents, we found Ms Walker a very competent and helpful witness. She answered honestly in the face of some difficulties with the internet connections of Ms Lovegrove for which no blame of course is attached and struck us as somebody who was efficient and was carrying out her obligations correctly. Insofar as Mr Dhamija was concerned, there was nothing that we saw or heard which caused us to consider that he was biased or was not acting in any way which was considered to be for the benefit of the Property and the leaseholders. Finally, the report from Mr Byers was calm, sensible, and made concessions where appropriate.

106. Insofar as Ms Mooney is concerned, we have experienced her competency and nothing in these proceedings indicated to us that she would have done anything other than an excellent job as a manager. We were, however, concerned that her draft management agreement appeared to be pandering to the Applicants in connection with the review of licences, which would do her no favour and had we appointed we would not have allowed that clause to stand.

107. However, we have come to the conclusion on the evidence that we have heard both written and oral that we will not appoint a manager at this time. We believe that BSM and Ms Walker have been given inadequate opportunity to fulfil their responsibilities. Ms Walker was the subject of immediate involvement by Mr Franses and Mr Ramsey almost from the time she set foot at the premises. In the beginning of the year when she was endeavouring to deal with matters, she was presented with a section 22 notice and in short order thereafter an application for the appointment of a manager. She then had to deal with the Covid pandemic.

108. There are certain matters that could perhaps have been done differently. We think that the presentation of the budget in March of 2020 was a bit clumsy and there should perhaps have been better awareness of the impact that would have on the leaseholders. The section 20 consultation will need to be reviewed and clearly there will need to be a decision made as to what works are required to the chimney. In that regard, however, we would recommend that the RICS matter is proceeded with without delay. However, as we have said above it seems to us it is for the Respondent to decide what steps are undertaken to repair the chimney. They have sought and have obtained professional experts' reports and there was nothing in those reports, which caused us to think that they were not satisfactory and reasonable.

109. Insofar as section 20C is concerned we make no order. The Respondents have been successful in resisting the application. And whether the lease enables then to recover these costs is of course another matter.

110. We would comment that it seems to us the time has come to try and resolve the differences between the parties. Calm heads should be used to review the position with regard to the roof and the licences granted for alterations to the flats within the building. We are satisfied that all concerned want the best for the Property and it should therefore be possible to work with that as the only aim.

We believe that with Ms Walker in charge there is every opportunity that this can be sorted as quickly as possible.

Andrew Dutton

Judge: _____
A A Dutton

Date: 18 May 2021

ANNEX – RIGHTS OF APPEAL

1. 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.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.