

**APPOINTMENT OF MANAGERS UNDER SECTION 24 OF THE LANDLORD AND TENANT ACT
1987**

**PRACTICE STATEMENT ON THE TRIBUNAL'S CONSIDERATION OF WHO TO APPOINT AS A
MANAGER**

Introduction

1. The purpose of the statement is to give leaseholders, prospective Managers, and landlords, an indication of the Tribunal's expectations of a proposed Manager when deciding whether to make an order under section 24 of the Landlord and Tenant Act 1987.
2. The power to appoint a manager under Part II of the 1987 Act is a power which will be exercised by a Tribunal in order to resolve a problem in the management of a property. This will either be because the Tribunal is satisfied that any of the specific circumstances under section 24(2) of the Act apply and that it is just and convenient to make the order or that in accordance with section 24(2)(b) that other circumstances exist which make it just and convenient for the order to be made.
3. Amongst other considerations it will not be just and convenient for an order appointing a Manager to be made unless the Tribunal is satisfied that the proposed Manager is suitable. The purpose of this practice statement is to give guidance about the characteristics of a Manager that a Tribunal will wish to be satisfied of before appointing. Because the circumstances of each case differs from another, the status of this document is intended to be as guidance rather than a definitive list of Tribunal requirements. However, the Tribunal will have regard to this statement when reaching their determination.

Identifying a Manager

4. It is for the parties to identify the person that they will ask the Tribunal to appoint as a Manager. That person should usually be identified before a section 24 application is made to the Tribunal.
5. The Tribunal will usually appoint a named person as a Manager rather than a company or a firm. The Tribunal expects the named person to take responsibility for the appointed Manager's duties. The named person may use the resources of their company/firm and receive support from others but the Manager will have ultimate responsibility.

6. Before appointing a person as a Manager, the Tribunal will need to be satisfied that the Manager would have no conflict of interest in taking up appointment. The Manager must also seek to avoid conflict of interest in the placing of contracts and discharging their other duties during their appointment. A conflict will occur if the dealings would be regarded by the average consumer as conflicting with the Manager's obligations under the order. If in doubt the Manager should seek directions from the Tribunal.
7. A Manager is appointed as an officer of the Tribunal and must act independently of the parties.
8. Save in exceptional circumstances, the Tribunal will not usually appoint a leaseholder as the Manager.

Tribunal Requirements

9. The Tribunal will usually require a proposed Manager to show the following prior to appointment:
 - (a) Membership of a professional body at a level of seniority commensurate with the responsibilities of a Tribunal appointed manager;
 - (b) An understanding of the duties of a Manager set out in the Service Charge Residential Management Code ("the Code") (3rd Edition);
 - (c) A reasonable period of experience as a manager, an understanding of the RICS code and (if relevant) demonstrable experience of dealing with large scale projects or difficult buildings;
 - (d) Professional indemnity insurance which is appropriate having regard to the nature of the subject premises and extensive enough to include tasks undertaken during appointment. The PI insurance may be held by the proposed Manager's firm as long as it expressly covers the additional risks/burdens which may affect an appointed Manager;
 - (e) A complaints procedure in accordance with, or substantially similar to, the requirements of the Royal Institution of Chartered Surveyors;
 - (f) Membership of a client money protection scheme or an alternative reputable scheme for the same purpose.
10. Before the substantive hearing the Tribunal expects the proposed manager to have:
 - (a) Inspected the premises;
 - (b) Read the Tribunal papers to understand the problems that are required to be addressed;
 - (c) Familiarised themselves with the leases; (d) Produced a management plan (see below); and

(e) Have read the annexed draft Management Order.

A management plan should include the following (as relevant):

- (a) A timetable and plan for handover from the current manager. This should include a list of essential documents such as service charge statements, accounts (audited if required), details of relevant contracts concerning the management of the property, schedules of service charge payments and arrears and budgets which are to be delivered to the Manager;
- (b) Details of accounts into which service charge funds are to be transferred;
- (c) Details of a plan to implement all Health and Safety and fire safety measures, including procurement of all relevant records and documentation;
- (d) Description of resource that will be allocated to management (number and qualifications of staff and time to be spent on property);
- (e) Description of tasks for day to day running of property;
- (f) Prioritisation of remedial tasks;
- (g) Proposals for collection of arrears;
- (h) Proposals for collection of additional funds (may depend on Tribunal order);
- (i) Details of professional contacts: lawyers, accountants, surveyors; (j) Proposals for communications with leaseholders and landlord(s); (k) Details of proposed remuneration.

12. The Manager must provide details of any previous Tribunal case under section 24 of the Landlord and Tenant Act 1987 where they were nominated to be the Manager by any party. This information is required whether or not the Tribunal decided to make the appointment as requested. This requirement includes any appointment which is still extant and any appointment which has expired

Draft Management Order

13. Annexed to this Practice Statement is a **draft** Management Order which the Tribunal will use as the basis for its order if a section 24 application is successful. The Tribunal will adapt the Order in accordance with the circumstances of the case.

14. **The parties and the Manager are required to consider the draft order and to provide the Tribunal with their observations and any proposed amendments on the terms of the draft order in good time for the final order to be produced. The Manager should have the ability to carry out all of the obligations set out in the final Order**

Siobhan McGrath

Chamber President

December 2021



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

Case Reference :

Property :

Applicants :

Representative :

Respondent :

Representative :

The Manager :

**Tribunal
members** :

Date of Order :

MANAGEMENT ORDER

Note to Drafter: Matters identified in square brackets are options to be considered in the context of the specific application before you

Interpretation

1. In this Order:

“**The Property**” means the flats and other premises known as known asand registered at HM Land Registry under title number [.....] and shall include [the building, outhouses, gardens, amenity space, drives, pathways landscaped areas, flower beds, passages, bin-stores, common parts, storage rooms basements, electricity and power rooms; and all other parts of the property].

“**The Landlord**” shall mean [.....] or their successors in title to the reversion immediately expectant upon the Leases.

“**The Tenants**” shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and "Tenant" shall be construed accordingly.

“**The Leases**” shall mean all leases and/or underleases of flats in the Property.

“**The Manager**” means [.....]

“**The Tribunal**” means the First-tier Tribunal (Property Chamber)

ORDER

2. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (“the Act”) [..... Of **[firm]**] is appointed as Manager of the Property.

3. The Manager’s appointment shall start on [.....] (“the start date”) and shall end on [.....] (“the end date”). ***NB: good practice might be for the end date to coincide with the end of the service charge year***

4. For the avoidance of doubt this Order supplements but does not displace covenants under the Leases and the Tenants remain bound by them. Where there is a conflict between the provisions of the Order and the Leases, the provisions of the Order take precedence.

5. The purpose of this Management Order is to provide for the management of the Property [which includes taking steps to resolve the following problems of inadequate management identified by the tribunal:]

(a) [.....] ***Identify any specific problems***

6. [To address the steps identified in the previous paragraph the Manager is empowered to:
 - (a) [.....] *Include here power to take steps that go beyond routine management e.g. provision for the Manager to collect in monies to carry out improvement works, or for the Landlord to contribute towards the costs of repairs*
7. The Manager shall manage the Property in accordance with:
 - (a) the terms of this Order and the Directions set out below;
 - (b) the respective obligations of the Landlord and the Tenants under the Leases whereby the Property is demised by the Landlord (save where modified by this Order);
 - (c) the duties of a Manager set out in the Service Charge Residential Management Code (“the Code”) (3rd Edition) or such other replacement code published by the Royal Institution of Chartered Surveyors (“RICS”) and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993(whether the Manager is a Member of the RICS or not; and
 - (d) the provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.
8. From the date this Order comes into effect, no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.
9. The tribunal requires the Manager to act fairly and impartially in the performance of their functions under this Order and with the skill, care and diligence to be reasonably 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.
10. The Manager or any other interested person may apply to vary or discharge this Order pursuant to the provisions of section 24(9) of the Act.
11. Any application to extend or renew this Order **must** be made before the end date, preferably at least three months before that date, and supported by a brief report of the management of the Property during the period of the appointment. Where an application for an extension or renewal is made prior to the end date, then the Manager’s appointment will continue until that application has been finally determined.
12. The Manager is appointed to take all decisions about the management of the Property necessary to achieve the purposes of this Order. If the Manager is unable to decide what course to take, the Manager may apply to the Tribunal for further directions, in accordance with section 24(4), Landlord and Tenant Act 1987. Circumstances in which a request for such directions may be appropriate include, but are not limited to:

- (a) a serious or persistent failure by any party to comply with an obligation imposed by this Order;
- (b) circumstances where there are insufficient sums held by the Manager to discharge their obligations under this Order and/or for the parties to pay the Manager's remuneration; and
- (c) where the Manager is in doubt as to the proper construction and meaning of this Order.

Contracts

13. Rights and liabilities arising under contracts, including any contract of insurance and/or any contract for the provision of any services to the Property, to which the Manager is not a party, but which are relevant to the management of the Property, shall upon the date of appointment become rights and liabilities of the Manager, save that:
- (a) the Landlord shall indemnify the Manager for any liabilities arising before commencement of this Order; and
 - (b) the Manager has the right to decide, in their absolute discretion, the contracts in respect of which they will assume such rights and liabilities, with such decision to be communicated in writing to the relevant parties within 56 days from the date this order.
14. The Manager may place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property.

Licences to assign, approvals and pre-contract enquiries

15. [The Manager shall be responsible for carrying out those functions in the residential Leases concerning approvals and permissions, including those for sublettings, assignments, alterations and improvements, that the Leases provide should be carried out by the Landlord.] ***NB: Do NOT include licences to assign and/or approvals unless there is agreement between the parties, or some other exceptional reason as these are Landlord proprietary rights***
16. The Manager shall be responsible for responding to pre-contract enquiries regarding the sale of a residential flat at the Property.

Legal Proceedings

17. The Manager may bring or defend any court or tribunal proceedings relating to management of the Property (whether contractual or tortious) and, subject to the approval of the Tribunal, may continue to bring or defend proceedings relating to the appointment, after the end of their appointment.

18. Such entitlement includes bringing proceedings in respect of arrears of service charge [and rent] attributable to any of the Flats in the Property, including, where appropriate, proceedings before this tribunal under section 27A of the Landlord and Tenant Act 1985 and in respect of administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002 or under section 168(4) of that Act or before the courts and shall further include any appeal against any decision made in any such proceedings.
19. The Manager may instruct solicitors, counsel, and other professionals in seeking to bring or defend legal proceedings and is entitled to be reimbursed from the service charge account in respect of costs, disbursements or VAT reasonably incurred in doing so during, or after, this appointment. If costs paid from the service charge are subsequently recovered from another party, those costs must be refunded to the service charge account.

Remuneration

20. [The Tenants are responsible for payment of [.... %] of the Managers' fees, which are to payable under the provisions of this Order but which may be collected under the service charge mechanisms of their Leases][and the Landlord is responsible for payment of [..... %] of those fees] *NB: This allows for a contribution by the Landlord, if appropriate, but must be discussed with the parties*

OR

21. [The Landlord is responsible for payment of the Managers' fees which are to be collected, in the first instance, from the Tenants under the service charge mechanisms of their Leases]. *NB: Use this where the Landlord should be responsible for paying **all** of the Manager's fees but, discuss with the parties before making such provision*

22. The sums payable are:

- (a) an annual fee of [.....] per flat for performing the duties set out in paragraph 3.4 of the RICS Code (so far as applicable);
- (b) any additional fees contained in a schedule to this Order for the duties set out in paragraph 3.5 of the RICS Code (so far as applicable);
and
- (c) VAT on the above fees.

Ground Rent and Service charge

23. The Manager [shall/shall not] collect the ground rents payable under the residential Leases.

24. The Manager shall collect all service charges and insurance premium contributions payable under the Leases, in accordance with the terms and mechanisms in the Leases.
25. **If appropriate:** Whether or not the terms of any Lease so provides, the Manager shall have the authority to:
- (a) demand payments in advance and balancing payments at the end of the accounting year;
 - (b) establish a sinking fund to meet the Landlord's obligations under the Leases;
 - (c) allocate credits of service charge due to Tenants at the end of the accounting year to the sinking fund;
 - (d) alter the accounting year and to collect arrears of service charge and insurance that have accrued before their appointment; and
 - (e) [.....] ***Insert any other powers considered necessary***
26. The Manager may set, demand and collect a reasonable service charge to be paid by the Landlord (as if he were a lessee), in respect of any unused premises in part of the Property retained by the Landlord, or let on terms which do not require the payment of a service charge.

If appropriate:

27. [To ensure that the Manager has adequate funds to manage the Property, the Manager may immediately collect £ [.....] from each Tenant and, as the case may be, [£.....] from the Landlord. Any sum demanded by the Manager shall be payable within 28 days.]
28. The Manager is entitled to recover through the service charge the reasonable cost and fees of any surveyors, architects, solicitors, counsel, and other professional persons or firms, incurred by them whilst carrying out their functions under the Order.

Administration Charges

29. The Manager may recover administration charges from individual Tenants for their costs incurred in collecting ground rent, service charges and insurance which includes the costs of reminder letters, transfer of files to solicitors and letters before action. Such charges will be subject to legal requirements as set out in schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Details of the fees charged are set out in the Appendix of additional fees.

Disputes

30. In the event of a dispute regarding the payability of any sum payable under this Order by the lessees, additional to those under the Leases (including as to the

remuneration payable to the Manager and litigation costs incurred by the Manager), a Tenant, or the Manager, may apply to the tribunal seeking a determination under section 27A of the Landlord and Tenant Act 1985 as to whether the sum in dispute is payable and, if so, in what amount.

31. In the event of a dispute regarding the payability of any sum payable under this Order by the landlord, other than a payment under a Lease, the Manager or the Landlord may apply to the tribunal seeking a determination as to whether the sum in dispute is payable and, if so, in what amount.
32. In the event of dispute regarding the conduct of the management of the property by the Manager, any person interested may apply to the Tribunal to vary or discharge the order in accordance with section 24(9) of the Landlord and Tenant Act 1987.
33. In the event of a dispute regarding the reimbursement of unexpended monies at the end of the Manager's appointment, the Manager, a Tenant, or the Landlord may apply to the Tribunal for a determination as to what monies, if any, are payable, to whom, and in what amount.

DIRECTIONS TO LANDLORD

34. The Landlord must comply with the terms of this Order.
35. On any disposition [other than a charge] of the Landlord's estate in the Property, the Landlord will procure from the person to whom the Property is to be conveyed, a direct covenant with the Manager, that the said person will (a) comply with the terms of this Order; and (b) on any future disposition (other than a charge) procure a direct covenant in the same terms from the person to whom the Property is to be conveyed.
36. The Landlord shall give all reasonable assistance and co-operation to the Manager in pursuance of their functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of the Manager's said rights, duties or powers except by due process of law.
37. The Landlord is to allow the Manager and their employees and agents access to all parts of the Property and must provide keys, passwords, and any other documents or information necessary for the practical management of the Property in order that the Manager might conveniently perform their functions and duties, and exercise their powers under this Order.
38. Within days from the date of this Order the Landlord must provide all necessary information to the Manager to provide for an orderly transfer of responsibilities, to include the transfer of:
 - (a) all accounts, books and records relating to the Property, including a complete record of all unpaid service charges; and

- (b) all funds relating to the Property including uncommitted service charges and any monies standing to the credit of a reserve or sinking fund.

DIRECTION TO CHIEF LAND REGISTRAR

39. To protect the direction in paragraph 34 for procurement by the Landlord, of a direct covenant with the Manager, the Registrar is ordered to enter the following restriction in the register of the Landlord's estate under title no(s) [.....]. The restriction is to have overriding priority against any search with priority or pending application for a disposition of the registered estate (other than a charge) that has been lodged after the [.....] day of [.....] *insert the date of the application to the tribunal.*

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without a certificate signed by the applicant for registration [or their conveyancer] that the provisions of paragraph 34 of an Order of the Tribunal dated [.....] have been complied with” *[Careful cross-check of the paragraph numbering of the Directions to the Landlord above is essential]*

DIRECTIONS TO MANAGER

40. The Manager must adhere to the terms of the Order above.

Registration

41. The Manager must make an application to HM Land Registry for entry of the restriction referred to in paragraph 38, within 14 days of the date of this Order.

Conflicts of Interest

42. The Manager must be astute to avoid any Conflict of Interest between their duties and obligations under this Order, and their contractual dealings. Where in doubt, the Manager should apply to the Tribunal for directions.

Complaints

43. The Manager must operate a complaints procedure in accordance with, or substantially similar to, the requirements of the Royal Institution of Chartered Surveyors.

Insurance

44. The Manager must maintain appropriate building insurance for the Property and ensure that the Manager's interest is noted on the insurance policy.

45. From the date of appointment, and throughout the appointment, the Manager must ensure that he/she has appropriate professional indemnity insurance cover in the sum of at least £2 million [or £ x million] and shall provide copies of the certificate of liability insurance to the Tribunal, and, upon request, to any Tenant or the Landlord. The Certificate should specifically state that it applies to the duties of a Tribunal appointed Manager.

Accounts

46. The Manager must:

- (a) prepare and submit to the Landlord and the Tenants an annual statement of account detailing all monies receivable, received and expended. The accounts are to be certified by the external auditor, if required under the Leases;
- (b) maintain efficient records and books of account and to produce for these for inspection, to include receipts or other evidence of expenditure, upon request by the Landlord or a Tenant under section 22 Landlord and Tenant Act 1985;
- (c) maintain on trust in an interest-bearing account at such bank or building society, as the Manager shall from time to time decide, into which ground rent, service charge contributions, Insurance Rent, and all other monies arising under the Leases shall be paid; and
- (d) hold all monies collected in accordance with the provisions of the Code.

Repairs and maintenance

47. The Manager must:

- (a) by [.....] draw up a planned maintenance programme for the period of the appointment, allowing for the periodic re-decoration and repair of the exterior and interior common parts of the Property, as well as any roads, accessways, mechanical, electrical and other installations serving the Property, and shall send a copy to every Tenant and to the Landlord;
- (b) subject to receiving sufficient prior funds:
 - (i) carry out all required repair and maintenance required at the Property, in accordance with the Landlord's covenants in the Leases, including instructing contractors to attend and rectify problems, and is entitled to recover the cost of doing so as service charge payable under the Leases or in accordance with the Order.
 - (ii) arrange and supervise any required major works to the Property, including preparing a specification of works and obtaining competitive tenders.
- (c) liaise with all relevant statutory bodies in the carrying out of their management functions under the Order; and
- (d) ensure that the Landlord, and the Tenants, are consulted on any planned and major works to the Property and to give proper regard to their views.

48. The Manager has the power to incur expenditure in respect of health and safety equipment reasonably required to comply with regulatory and statutory requirements.

Reporting

49. By no later than six months from the date of appointment (and then annually) the Manager must prepare and submit a brief written report to the Tenants, and the Landlord, on the progress of the management of the Property up to that date, providing a copy to the Tribunal at the same time.

End of Appointment

50. No later than 56 days before the end date, the Manager must:

- (a) apply to the tribunal for directions as to the disposal of any unexpended monies;

(b) include with that application a brief written report on the progress and outcome of the management of the Property up to that date (a “Final Report”); and

(c) seek a direction from the tribunal as to the mechanism for determining any unresolved disputes arising from the Manager’s term of appointment (whether through court or tribunal proceedings or otherwise).

51. Unless the tribunal directs otherwise the Manager must within two months of the end date:

(a) prepare final closing accounts and send copies of the accounts and the Final Report to the Landlord and Tenants, who may raise queries on them within 14 days; and

(b) answer any such queries within a further 14 days.

52. The Manager must reimburse any unexpended monies to the paying parties, or, if it be the case, to any new Tribunal appointed Manager within three months of the end date or, in the case of a dispute, as decided by the Tribunal upon an application by any interested party.

Schedule of Additional Fees