FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**BIR/00FN/LAM/2020/0001** **BIR/00FN/LLC/2020/0002**
Property	**:**	**Stoughton Court, 24 Stoneygate Road, Leicester LE2 2AD**
Applicants	**:**	**Andrew Willis (1)** **Claire Simmons (2)** **Stoughton Court Management (Leicester) Ltd (3)** **Hussain Malik (4)**
Representative	**:**	**Weightmans solicitors**
Respondents	**:**	**Stoughton Court (RTM) Company Ltd (1)** **Talvinder Singh Billen and Satbir Kaur Billen (2)** **Jit Kaur (3)** **Mohammed Salim Rezah Boodhoo (4)** **Charnjit Kaur Minhas (5)** **Rajinder and Paramjit Dosanjh (6)**
Representative	**:**	**Frisby & Small Solicitors**
Type of application	**:**	**Application for the appointment of a manager under section 24 Landlord and Tenant Act 1987**
Tribunal member	**:**	**Judge C Goodall** **Mr G S Freckelton FRICS**
Date and place of hearing	**:**	**30 September and 2 October 2020 by Cloud Video Platform**
Date of decision		**7th October 2020**

DECISION

Background

1. This is an application for the appointment of a manager of Stoughton Court brought by two lessees. The application was dated 25 February 2020. Directions were made by the Tribunal leading to the application being listed for a hearing via video platform over two days on 30 September and 2 October 2020.

2. There are two protagonists in this case. The application was led by Mr Andrew Willis, the lessee of Flat 4. He is represented by Weightmans solicitors, but it was Mr Willis who presented the case at the video hearing with his solicitor observing.

3. Opposition to the application was led by Mr Talvinder Billen, the joint freehold owner and joint lessee of Flat 1. He was represented at the hearing by Mr Justin Crowson of Frisby & Small solicitors. One other lessee – Mr Boodhoo – attended the video hearing but he had technical problems and was only able to view the hearing intermittently.

4. There was no formal inspection. The Tribunal surveyor member, Mr Freckelton, carried out an informal external inspection on 28 September 2020. His observations, where relevant, are mentioned in this decision document.

5. This document sets out our decision and gives our considered reasons.

Parties

6. The application involves two companies both called Stoughton Court Management (Leicester) Ltd. One was in existence from prior to 1980 until it was struck off the register of companies in about 2013. Although no longer on the register, it has considerable significance in the story that will unfold. For ease of reference it is described as SCML. The second company called Stoughton Court Management (Leicester) Ltd is a newly constituted company. It is named as the third applicant, but it has no interest in the subject matter of these proceedings. Mr Crowson applied for it to be removed as an applicant and it will avoid confusion if we do so. We accordingly direct that the third applicant be removed as a party in these proceedings.

7. As at the date of the hearing, the parties to this application and the occupiers and owners of Stoughton Court were therefore:

Property	Name	Nature of interest
Flat 1	Talvinder Singh Billen and Satbir Kaur Billen	Lessee
Flat 2	Jit Kaur	Lessee

Flat 3	Talvinder Singh Billen and Satbir Kaur Billen	Freeholder
Flat 4	Andrew Willis	Lessee
Flat 7	Hussain Malik and Tahseen Malik	Lessee
Flat 8	Mohammed Salim Rezah Boodhoo	Lessee
Flat 9	Claire Simmons	Lessee
Flat 10	Charnjit Kaur Minhas	Lessee
Flat 11	Rajinder Singh Dosanjh and Paramit Dosanjh	Lessee
Flat 12	Steve Gill and Michelle Gill	Lessee
Common parts	SCML	Lease disclaimed
Freehold	Talvinder Singh Billen and Satbir Kaur Billen	
None	Stoughton Court (RTM) Company Limited	RTM Manager

8. In the application, Andrew Willis and Claire Simmons were named as applicants, and Mr Malik of Flat 7 was subsequently joined as an applicant. Mr Willis is the driving force behind the application. As well as Ms Simmons and Mr Malik, he has the support of Mr & Mrs Gill of Flat 12.

9. The Application is opposed by Mr & Mrs Billen, who jointly own the freehold and Flat 1, his mother, Jit Kaur, the owner of Flat 2, and Mr Boodhoo of Flat 8. Mr Billen also has the support of Ms Minhas of Flat 10 and Mr & Mrs Dosanjh of Flat 11. Flat 3 is not leased and its ownership remains in the freehold reversion.

10. Of the 10 flats, the owners of four of them are supporting the application, and six of them oppose the application.

11. The RTM Company is named as a respondent. Control of the RTM Company is a disputed issue; both Mr Willis and Mr Billen claim control, and therefore two responses to the application by the RTM Company have been received by the Tribunal, one in support of it and one opposing it.

Law

12. It is most convenient if we first set out the main provisions and cases that govern an application under section 24 of Landlord and Tenant Act 1987 ("the Act"). The power for the tribunal to appoint a manager is contained in Part II of the Act. A preliminary notice must be served, after which an application can be made (see sections 22 and 23 of the Act). No issues were raised about compliance with these notice requirements in this application.

13. Section 24 sets out the requirements that must be met before a tribunal can appoint a manager. The section provides:

> 24 Appointment of manager by a tribunal.
>
> (1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—
>
> (a) such functions in connection with the management of the premises, or
>
> (b) such functions of a receiver, or both, as the tribunal thinks fit.
>
> (2) The appropriate tribunal may only make an order under this section in the following circumstances, namely—
>
> (a) where the tribunal is satisfied—
>
> (i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
>
> (ii) ...
>
> (iii) that it is just and convenient to make the order in all the circumstances of the case;
>
> (ab) where the tribunal is satisfied—
>
> (i) that unreasonable service charges have been made, or are proposed or likely to be made, and
>
> (ii) that it is just and convenient to make the order in all the circumstances of the case;
>
> (aba) where the tribunal is satisfied—
> (i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and
>
> (ii) that it is just and convenient to make the order in all the circumstances of the case;
>
> (ac) where the tribunal is satisfied—

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

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

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

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

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

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

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

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

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

(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred. In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

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

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

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

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

(b) such incidental or ancillary matters, as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

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

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

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

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

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

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

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

(a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

(b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

(8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or

unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.

(9A) the tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—

(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and

(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

(10) An order made under this section shall not be discharged by the appropriate tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.

14. The scope of the management powers that the tribunal may grant has been considered in a number of cases. In *Maunder Taylor v Blaquiere [2002] EWCA Civ 1633*, Lord Justice Aldous in the Court of Appeal said at paragraph 35:

> "[35] The Landlord and Tenant Act 1987 was a radical piece of legislation which in a number of respects impinged upon the contractual rights of landlords."

And at paragraph 41,

> "[41] In my view the purpose of Part II of the 1987 Act is to provide a scheme for the appointment of a manager who will carry out the functions required by the court. That manager carries out those functions in his own right as a court-appointed official. He is not appointed as the manager of the landlord or even of the landlord's obligations under the lease. That being so, Mr Maunder Taylor was a court-appointed manager appointed to carry out those duties required by the order appointing him. …"

15. In *Sennadine Properties Limited v Heelis [2015] UKUT 55 (LC)*, the Deputy President of the Lands Chamber of the Upper Tribunal said, at paragraph 51:

"51. I also accept the appellant's general submission that the scope of an order under s.24 should be proportionate to the tasks which the tenants are entitled under their leases to look to their landlord to perform. I do not rule out that it may be appropriate in some cases for an order to confer power on a manager to collect rents (as opposed simply to service charges) payable by lessees of commercial premises included within the scope of a management order, but the circumstances in which any order directly intervening in the relationship between a landlord and a third party might be appropriate are likely to be exceptional."

16. The principles to be derived from these cases are neatly encapsulated in the following six paragraphs taken from the judgement of His Honour Judge Huskinson in *Queensbridge Investments Ltd v Lodge, 2015 WL 7259170* as follows:

"43. The wording of the relevant statutory provisions is wide. The power in section 24(1) is to appoint a manager to carry out in relation to any premises such functions in connection with the management of the premises or such functions of a receiver or both as the F-tT thinks fit. It is functions in connection with the management of the premises which the manager can be appointed to carry out, not the functions of the particular landlord under the particular lease in question. See paragraph 38 and following in the judgments in Maunder Taylor v Blaquiere.

44. I accept that as a matter of general principle, as well as for the purpose of complying with the relevant human rights legislation including in particular Article 1 of the first protocol to the ECHR , there must be a reasonable relationship of proportionality between the terms of the management order and the aim sought to be realised, in the interests of the community, by the management order. I respectfully agree with the Deputy President's analysis in paragraph 51 in Sennadine Properties Limited v Heelis where he stated that the scope of an order under section 24 should be proportionate to the tasks which the tenants are entitled under their leases to look to their landlord to perform. I also agree that circumstances in which it is appropriate for a management order directly to intervene in the relationship between a landlord and a third party (e.g. a commercial tenant of part of a building) are likely to be exceptional, but in making this observation the Deputy President was clearly not seeking to put any gloss upon the statutory provisions in section 24 . I also conclude that the reference to the order being "proportionate to the tasks which the tenants are entitled under their leases to look to their landlord to perform" should be considered in the light of the following matters.

45. Tenants of residential units which constitute part of a building are entitled to expect that the building will be properly managed including

in particular repaired (especially so as to keep the building safe) and insured.

46. Mr Sefton argued that in so far as leases of residential units in a building are defective such that they do not make satisfactory provision regarding certain matters (for instance repair or insurance) then the proper solution is not to seek to cure this problem by the appointment of a manager but is instead for the parties to make an application under section 35 of the 1987 Act for an order amending the relevant leases. He submitted that such a problem could not properly be cured through a management order.

47. It may well be correct that, where leases are defective, the only proper solution in the long term is to seek an amendment of the terms of the leases under section 35 and following. However this does not mean that the appointment of a manager under section 24 (which may only be an appointment for a limited period) cannot properly confer powers upon the manager which will avoid a problem arising from any inadequate drafting of the leases. It may be observed that section 24 contemplates an interlocutory order appointing a manager. It may be necessary, for instance if a building is uninsured by reason of failure of a landlord to comply with its covenants, for an interlocutory management order to be made as a matter of urgency so that such insurance can be put in place. It cannot be right, if the leases themselves make inadequate provision for the placing of insurance, that the manager can only be given these inadequate powers under the lease — with the tenants being told that if they wish their building to be properly insured they need to make an application to amend the lease terms under section 35 . In summary, by way of further example, suppose circumstances in which the leases are badly drafted such that the management which the tenants could expect under these badly drafted provisions would be unsatisfactory, and suppose also that the landlord has failed even to provide this unsatisfactory level of management. In my judgment if a manager is appointed under section 24 in such circumstances the F-tT's powers when appointing the manager are not limited to conferring upon the manager only the inadequate powers of management conferred under the badly drafted leases.

48. I therefore accept that the management powers conferred by a management order should be proportionate — but they should be proportionate to what the tenants are entitled to expect in accordance not merely with the terms of the leases viewed on their own but instead in accordance with the terms of the leases (which remain a relevant consideration) when read in the light of the relevant law including the terms of the 1987 Act and the matters which Parliament considered tenants should be entitled to expect."

The property interests at Stoughton Court

17. Stoughton Court consists of a stone dwelling house which we estimate to have been built around the turn of the twentieth century. There is an adjoining block of purpose-built flats. There were originally four flats in the dwelling house (flats 1 – 4) and six flats in the adjoining block (flats 7 – 12). In around the early 1980's, nine of the ten flats were leased on long leases.

18. Although it appears to have been the original intention of the developer to grant leases of all the flats, no lease for Flat 3 was created. That flat therefore remains in the freehold title, which is now owned by Mr & Mrs Billen. In about 2011/12, the Billen's converted Flat 3 into two flats – known as Flats 3A and 3B. They are also lessees of Flat 1.

19. For some reason, the flat numbers were allocated in such a way that numbers 5 and 6 were never used.

20. On 14 November 1980, a lease of the whole of Stoughton Court except for the flats ("the SCML Lease") was granted to SCML by First State Properties Ltd for 125 years without a premium and at a peppercorn rent. It was intended to be (and we believe was) a tenant owned management company, but as we will explain it was under the control of Mr Billen during the period of time under consideration in this application.

21. Long leases were also granted around the early 1980's to the nine lessees identified in paragraph 7 above. We have a sample lease (for Flat 4) in the bundle of documents provided by Mr Willis. We have assumed, as is customary, that all nine leases (together "the Flat Leases") are in the same form subject obviously to variation to suit the individual transaction.

22. In 2011 a Right to Manage company was formed, called Stoughton Court (RTM) Company Limited ("the RTM Company"). It took over management on 15 December 2011. Mr Willis was a director and he has played a significant role in leadership of the management of Stoughton Court by the RTM Company.

23. These leases set up a scheme whereby the apparent intention was that the whole of the buildings and estate were demised either to flat owners or to the tenant owned management company. This was never fully achieved as a result of there being no lease of Flat 3.

The SCML Lease

24. The land demised to SCML was described in its lease as the Demised Premises, that term being defined as:

> "the common parts of the Building and more fully described in Part II of the First Schedule"

25. Part II of the First Schedule defines the Demised Premises as:

"ALL THOSE parts of the Building not comprised in the Flats …"

26. The definition of Building is:

> "the building and grounds of which the Demised Premises form part and known as Stoughton Court Stoneygate Road Leicester and edged green on the plan annexed hereto"

27. The land edged green is the whole of the freehold land owned by Mr & Mrs Billen comprised in their freehold titles under title numbers LT 14834 and LT13402. One interpretation of the lease structure therefore was that by virtue of the grant of the SCML Lease, it was never intended that there should be any part of the land and buildings of which the freeholder had immediate possession.

28. The definition of "Flats", which comprises the part of Stoughton Court not included in the SCML lease is:

> "all those parts of the Building which are let to flat owners and which are described in Part I of the First Schedule."

29. The first schedule is unfortunately not entirely helpful in identifying which parts of the Building are let to flat owners. It simply describes the extent to which the walls, ceilings, joists, window frames etc are included within the demise of each flat, with the basic position being that the external walls, and the external surfaces of doors, door frames and window frames are not included in the flats and therefore are part of the lease to SCML.

30. There can be no doubt, following this analysis, and we so find, that all of the entrance ways, halls, staircases, lobbies, basements, grounds, and the four garages that are not let to flat owners on the eastern part of the northern boundary are included in the SCML lease. Less clear is whether Flat 3 might also be included. It has never been let to a flat owner, and it may therefore be the case that it was included in the demise to SCML.

31. The purpose of the SCML lease is set out in the recitals, as follows:

> "WHEREAS
> …
>
> (2) The Lessors are desirous of disposing of each of the Flats forming part of the Building (as hereinafter defined) by means of a form of Lease in substantially the form of the draft Lease annexed hereto or as near thereto as the circumstances will admit or require to the intent that the Lessees of each of the said Flats may (so far as is practicable) be bound by substantially similar covenants stipulations and provisions

(3) So as to ensure the effective maintenance and management of certain common parts (being the demised premises as hereinafter defined) of the Building which will not be included in any of the leases of the said Flats and the provisions of certain services to and for the Lessees for the time being of the said Flats the Management Company has been incorporated under the Companies Acts 1948-67 with the objects (inter alia) of taking from the Lessors a Lease of the demised premises and undertaking certain obligations and the provision of certain services."

32. The SCML Lease contains obligations upon SCML in clause 3(4) to repair maintain renew uphold and keep the Demised Premises in good and substantial repair and condition. There are additional provisions regarding decorating, lighting and cleaning. The detail does not need to be fully set out in this decision.

33. In order to fund its obligations, the Lessor covenanted that every lease to be granted would contain covenants to pay service charges in accordance with a draft lease that was said to be annexed to the SCML Lease (though we have not seen a copy). Clause 4(16)(e) of the lease is a covenant by SCML to collect a service charge and to comply with the service charge provisions set out in the Fifth Schedule. Those provisions broadly mirror the service charge provisions in the Flat Leases.

34. The Lessor covenanted in clause 4(6) to pay the service charge attributable to any unlet flat.

35. There are major problems with the SCML Lease. It was never registered at HM Land Registry. Stoughton Court was in an area of compulsory registration at the point it was granted. Mr Crowson argued that it was therefore not binding on the freeholder.

36. Also, as mentioned in paragraph 6 above, SCML has been struck off the register of companies. We have been shown evidence that on 31 October 2018 the Treasury Solicitor disclaimed the Crown's title (if any) in Stoughton Court.

37. Mr Willis told us that an application had been made to HM Land Registry for late registration of SCML Lease. It had been allocated a title number. We were led to understand that the application was to register the lease in the name of the new version of Stoughton Court Management (Leicester) Ltd. If that is so, we consider that application to be entirely misconceived.

38. Upon further exploration of this issue at the hearing, Mr Willis's solicitor provided the Tribunal with an explanatory note of her proposals to resolve the difficulties of non-registration. The note said the intention was to apply to the High Court for a vesting order under section 1017 of the Companies Act 2006 vesting the Lease in the RTM Company. Although out of time, there is discretion to extend time and the note suggested there

was a reasonable prospect of that time extension being granted. The note did not deal with how Mr & Mrs Billen's freehold interest would become subject to the SCML Lease as he had been a purchaser for value without the SCML Lease being noted on the register in 2000.

39. We cannot in this decision make a ruling on the impact of non-registration and whether any disadvantage of non-registration to the lessees at Stoughton Court can be overcome, not least because we consider it is not necessary to do so to determine the application, we did not hear full argument on the point, and it is a difficult point of law involving consideration of the effect of section 70 of the Law of Property Act 1925 which was the law in force at the time of the purchase, constructive trusts, equitable interests, and no doubt other legal principles that might emerge in a full consideration of the question.

The Flat Leases

40. The lease we have seen is Mr Willis's lease of Flat 4. The term is 125 years for a premium, and a ground rent of £50 per annum, rising by an additional £25 every 25 years.

41. The leases are tri-partite between the freeholder, SCML and the lessee. There are a number of references in the lease to the existence of the SCML Lease. Mr Billen denied that he knew about the SCML Lease when he purchased the freehold, but we do not think that can be right as he had already purchased Flat 1, the lease of which had references to it.

42. The demise is of the individual flat, identified on a plan. In Mr Willis's case, his demise also included one of the garages on the northern boundary of Stoughton Court.

43. The definition of demised premises does not include the main structure of the building or the roofs walls and foundations, nor the external surfaces of the doors, door frames and windows in the walls.

44. There is a covenant by SCML to maintain and keep the Common Parts in good and substantial repair and condition. The Common Parts includes the roof, walls, and foundations and all areas of the Estate which are for the common use of the Flat Owners. The Second Schedule contains rights to use the Common Parts.

45. The lessees covenant to pay a service charge in accordance with the provisions of the Fifth Schedule, which mirror provisions in the SCML Lease.

46. The lessee's contribution towards the service charge is a fixed percentage of 10%. At the hearing, we were told that this is the same in all nine leases, leaving the balance of 10% to be paid by the Lessor.

The facts

2000 – 15 December 2011 – management by SCML

47. From the documents produced and from the information we were given at the hearing, we find the following factual account of the management history at Stoughton Court, from which we have drawn our conclusions on the application. Occasionally we have referenced the page number in the Applicants bundle to which our account refers, which may assist the parties most directly connected to the case.

48. We have no information about the operation and management of Stoughton Court from the time the leases were set up until the year 2000. We assume that SCML was managing the property in accordance with the requirements in the leases.

49. In 2000 Mr and Mrs Billen bought the freehold. It was registered in their names on 13 September of that year. They were already the leaseholders of Flat 1 at that point.

50. It would appear that the freeholder had control of SCML. It is our understanding that although this was a lessee owned company, in that the shareholders were, presumably, the nine lessees and the landlord, from 2000 its only director was Mr Billen, with his wife holding the office of company secretary.

51. Mr Willis has told us that the standard of management in the early 2000's was wholly unsatisfactory and his claim is that Mr Billen was taking management decisions to suit his own personal financial interests rather than in the interests of the members of SCML. In particular he is alleged to have been managing Stoughton Court through a management company called Oneek Properties, charging SCML for services he provided to Stoughton Court, those services not being of an adequate standard. We have not been provided with specific detail to support this claim and we make no findings of fact to support it. However, we do find as a fact that matters were of such concern to residents that they attempted to set up a residents' association to obtain receipts and invoices to see if the charges were fair. Mr Willis was not the instigator of these actions, though he supported them.

52. The lessees' actions eventually resulted in a letter of complaint to Mr Billen dated 18 May 2002 on behalf of seven of the lessees. The complaints were mainly that Stoughton Court was not being properly repaired and maintained.

53. That letter did not do the trick. So, on 16 March 2003, a number of the lessees called a meeting of the shareholders and passed a resolution to remove Mr Billen as a director, to remove the company secretary, and to replace them with three of the lessees (page A-470).

54. The response to that resolution was a letter from Mr Billen's solicitors (A-45) pointing out that the articles of association for SCML contained an article at clause 17(2) that:

> "Until leases of all the Flats in the Building shall have been granted by the Landlord no votes shall attach to any share in the Company save to the share allocated to the Landlord …"

55. The attempt to appoint new directors therefore failed. It is important to observe that Mr Billen therefore controlled both the freehold and SCML. He was entitled to do what he liked with his freehold interest, but in relation to SCML, he owed fiduciary duties, as the only director, to look after the interests of its members. Legally he was within his rights to refuse to appoint additional directors, but in rebuffing the involvement of other shareholders, he demonstrated that he did not understand the fiduciary duties he had in exercising management of SCML.

56. It appears that even though Mr Billen had rebuffed attempts to remove him as a director of SCML, he did appoint a new manager, namely Countrywide. He says that for a period Countrywide accepted instructions from the Chair of the Residents Association that had been set up by a majority of the lessees, and whilst that system was in place, routine services and maintenance were of a good standard. It is said though that this did not last. By March 2007, services were again being provided by a company controlled by Mr Billen, which provided a sub-standard service. Some repairs had to be funded directly by lessees even though they were the responsibility of the management company.

57. Mr Willis's case is that by 2010 the state of the building and grounds had deteriorated significantly, with statutory and regulatory requirements not being complied with. Mr Willis raised concerns with Countywide.

58. Mr Willis produced photographs of the grounds and exterior of Stoughton Court as at October 2010 and December 2011. These show that the grounds at the rear of the property were very untidy and overgrown and in obvious need of maintenance. The external walls were in poor condition and in need of painting. The fire escape was broken and dangerous. There is evidence of water leaks from external pipework. External woodwork is in poor condition with peeling paint and deterioration of the condition of the woodwork evident. There is missing brickwork above the lintel to the annexe entrance. On the balance of probabilities, we find that this is likely to have been its condition throughout the period between the two sets of photographs. We find that the condition of Stoughton Court as at December 2011 was in breach of SCML's covenant at clause 4(a) of the SCML Lease and clause 6(a) of the Flat Leases. As the sole director of SCML at that time, the person responsible for that breach was Mr Billen.

59. We have seen a series of emails covering the period 24 January 2011 to 5 October 2011 from Countrywide, which touch on the relationship between that company and Mr Billen, which are in pages 60 – 64 in the Applicants bundle of documents. On 24 January 2011, there was an internal email between Countrywide staff which was copied to Mr Willis. This asked for information from the recipient on "what progress has been made with the Freeholder in this matter?" The email explains that Countrywide's intention was to give the freeholder notice of repairs, obtain estimates, give the freeholder notice of those that were essential and tell him he could not carry out these repairs himself. It was suggested at least some repairs would need to be funded from the service charge account and that section 20 consultation, or an application for dispensation, would have to be considered.

60. There is then an email from Countrywide on 9 February 2011 to Mr Gill confirming that "the management of the development was highly influenced by the freeholder and our hands were tied on a number of issues". There is reference to a report on Stoughton Court that had been prepared by their surveyor, a final draft of which was awaited before it could be distributed to residents.

61. We do not have any further emails until one dated 23 June 2011 to Mr Willis. Countrywide said, "as you can imagine this is a difficult situation for us as managing agents as we are dealing with the client who has not been at all forthcoming".

62. Finally, in this email exchange, we have an email to Mr Willis dated 5 October 2011 saying that they intended to pay Mr Billen for the cleaning invoices as he as Landlord had instructed them to do so.

63. Even though we know some emails in this email train have not been shown to us, we are satisfied that Countrywide were being obstructed in managing Stoughton Court as they would have wished, due to instructions to the contrary from Mr Billen, and we so find.

Setting up the RTM Company

64. This series of email exchanges in 2011 ran alongside an application that had been made by the RTM Company to acquire the right to manage Stoughton Court. We are in no doubt that the application was an attempt by a majority of the lessees to take management into their own hands because they were dissatisfied with the management by SCML.

65. A notice of claim was served on Mr & Mrs Billen on 7 February 2011. They defended the claim on the basis that the RTM Company only had the support of five members who were qualifying tenants on the date of claim. They required at least 50% of the members, and as there were eleven flats, they did not have sufficient support. The claim that there were eleven flats

was based upon Mr Billen's assertion that he had converted Flat 3 into two units by 7 February 2011.

66. The application was determined by the Midland Leasehold Valuation Tribunal on 15 September 2011. They rejected Mr Billen's claim, finding that there was evidence that at the relevant date, Flat 3 comprised of one unit, not two. Mr Willis says this is clear evidence that Mr Billen gave misleading evidence to that Tribunal. The written decision of that Tribunal supports Mr Willis's interpretation, and we agree with it.

67. We were interested to read an email provided by Mr Willis from Countrywide and dated 9 February 2011. It is addressed to Mr Willis and it says:

> "We have today received the right to manage documentation from Canonbury Management [the company instructed to progress the RTM claim].
>
> Mr Billen has also received this information and has rung our offices asking how he can stop this. We have told him that the notice period is in place and there is nothing really he can do about this.
>
> He has suggested building two flats in the basement and turning apartment 3 into two which he has planning permission for. This would give him another three apartments.
>
> He is seeing his solicitor today regarding this and will be ringing me back."

68. That email has not been challenged by Mr Billen and we find that it is a true record of that conversation. It is clear to us that when Mr Billen told the Tribunal that he had converted Flat 3 into two units by 7 February 2011, he knew that to be an untrue claim.

The demise of SCML

69. We have not been given specific dates, but it is common ground that in 2011 SCML was struck off the register of companies as a result of administrative failures to file accounts and/or annual returns. It is an offence not to file these documents. We were told that it was restored to the register but struck off again in 2013. The person responsible for the administrative failures leading to striking off was Mr Billen as he was sole director and as we have seen he rejected any attempts to allow others to have any involvement with the company by claiming the protection of the articles of association (see above).

70. Mr Crowson argued that the striking off of SCML was of no consequence as the RTM Company had taken over management. It was his case also that non-registration of the SCML Lease meant Mr Billen owned the

freehold unburdened by the SCML Lease. We have said already that we do not make any determination on the impact of non-registration and that it is a point that needs more consideration. But in our view, it was massively in the interests of the shareholders and lessees at Stoughton Court that the company continue in existence. It is an important part of the contractual web created by the leases. In our view, Mr Billen put his personal interests ahead of the interests of SCML in failing to carry out the required administrative procedures to prevent SCML being struck off the register, to the detriment of lessees.

Management by the RTM Company 16 December 2011 – 4 February 2019

71. Management of Stoughton Court was taken over by the RTM Company on 15 December 2011. We have been shown final service charge accounts of SCML reflecting the financial transactions entered into by Countrywide as agent of SCML up to that date. The net asset value was £3,348, comprising cash at bank of £426, debtors of £5,921, and creditors of £2,999. The majority of the debtors were service charge arrears of £5,360 and costs owed by the landlord of £475.

72. Despite using their best endeavours to receive the surplus funds in the hands of SCML, no balance was ever paid to the RTM Company. In our view it should have been. There is no one else with responsibility for this failure except for Mr Billen.

73. On taking over management, the RTM company set about improving Stoughton Court. They have always employed managing agents, being Lloyd Property Management (subsequently taken over by C P Bigwood Ltd) for 2012 – 2014 inclusive. Walton & Allen took over for 2015 – 2016 inclusive. Butlin Property Service Ltd managed for 2017 and 2018. In 2019, Warwick Estates Property Management Ltd were appointed.

74. As an initial step, a comprehensive building survey was prepared by rca – chartered building surveyors in February 2012. A detailed action plan was prepared to address condition issues. This plan was updated in 2015 and in 2019. We have been shown a planned maintenance programme for 2019 covering a six-year period up to 2024 with a starting budgeted service charge for 2019 of £2,000 per flat, falling over that period to £1,600. The budget for 2020 includes £6,000 for repairs to the fire escape.

75. In our view the actual and planned expenditure programmes appear professional and demonstrate an awareness of the repair and maintenance needs of Stoughton Court and were a sensible programme to effect those repairs both through the period from 2012 – 2019, and for future years beyond 2019.

76. In order to fund the proposed expenditure and other management costs, we are satisfied that the RTM Company prepared an annual budget and made service charge demands in accordance with the procedures set up in the Flat Leases for the proposed expenditure to each lessee and to Mr & Mrs Billen in respect of Flat 3.

77. Mr Billen is critical of the stewardship of the RTM over the eight-year period they have managed Stoughton Court, but only in very general terms. He alleges they have "received large sums in service charges, the use of which is not clear". He also accuses the RTM Company of spending on "ill-judged legal actions against [the respondents]".

78. Mr & Mrs Dosanjh are also critical. Their main criticism is that they have been excluded from meetings and have not been allowed to have any involvement in decision making. They do however complain of "extremely high" and "extortionate" service charges, and of "missing funds".

79. Mrs Minhas has also levelled criticism. She also complains of never being informed of meetings and of having to pay service charges more akin to London prices.

80. None of the Respondents however have challenged any specific service charge expenditure in any service charge year or any of the processes for demanding and collecting the service charges. Of course, the proper way to have any dispute aired concerning the payability of service charges is to bring a claim to the First-tier Tribunal under section 27A of the Landlord and Tenant Act 1985. Despite County Court actions leading to the issue of judgements for recovery of service charges against Mr Billen and his mother, Jit Kaur, there has been no referral to the F-tT by any of the Respondents.

81. The tribunal noted that in relation to the service charges levied between 2012 and 2019, we were not shown any evidence of final reconciliations between budgeted service charges demanded and the actual final figures when they have been ascertained. The Flat Leases require this exercise be undertaken and for a certificate of excess or deficiency to be provided to the lessee. We asked Mr Willis whether these certificates had been provided and he was not able to establish to our satisfaction that they had been.

82. There is also an issue about the proportion of service charge to be collected from the service charge payers. The Flat Leases all require apportionment of 10% to each flat (and under section 103 of the Commonhold and Leasehold Reform Act 2020, if Flat 3 is viewed as one flat, 10% is payable for the residual freehold flat). Mr Willis informed us that in his view the sub-division of Flat 3 into two units would increase the total number of units so the service charge would be divided differently under section 103 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). We make no determination on this point. It is not relevant to the

determination we are being asked to make in this application. If it is, and remains, a live matter of contention, an application should be made under section 27A for a determination of the proportion payable for each flat. Depending on how this issue is resolved, there may be a need to revisit the apportionment of the service charge back to the date of conversion.

83. We have not seen every invoice, service charge demand, or the accounts for every part of this period and we cannot say that there are no matters worthy of further investigation. But on the evidence we have seen, and subject to the points we have made in the preceding paragraphs, we are satisfied that the RTM Company has managed Stoughton Court competently, through professional managing agents, throughout this period. It any lessee disagrees it is possible for them to make a section 27A application to the Tribunal.

Collection of the service charges

84. It is Mr Willis's case that much of what the RTM Company wished to achieve at Stoughton Court has been thwarted by failure, particularly in relation to the flats controlled by Mr Billen, to pay service charge demands.

85. Mr Willis says the arrears of service charges up to 14 May 2020 are as shown in this table:

		£
Flat 1	Talvinder Singh Billen and Satbir Kaur Billen	7,838
Flat 2	Jit Kaur	6,548
Flat 3	Talvinder Singh Billen and Satbir Kaur Billen	16,503
Flat 4	Andrew Willis	(1,011)
Flat 7	Hussain Malik and Tahseen Malik	5,548
Flat 8	Mohammed Salim Rezah Boodhoo	8,038
Flat 9	Claire Simmons	(512)
Flat 10	Charnjit Kaur Minhas	5,385
Flat 11	Rajinder Singh Dosanjh and Paramit Dosanjh	5,278
Flat 12	Steve Gill and Michelle Gill	488

86. We have seen a further table showing the annual build-up of these arrears. The arrears for Flats 1, 2 and 3 (i.e. those effectively controlled or influenced by Mr & Mrs Billen) go back to the first year that the RTM Company took over management. All other flat owners except for Mr Boodhoo, paid their service charges up to the end of 2017, so their current arrears have built since then. Mr Boodhoo's arrears were only £60 at the end of 2016. The pattern for his account is that he generally paid up until that point.

87. It is not the case that payments for Flats 1, 2 and 3 were never made. Mr Willis's case is that payments were never made voluntarily. We asked for full detail of all payments for these three flats to be provided to us during

the hearing. Due to time constraints, Mr Willis was not able to fully comply with this request but he was able to provide information about Flat 1, which shows that there was a voluntary payment of £500 in June 2012 in respect of the first service charge invoice after take over by the RTM Company. All other payments were only made after debt collection activity was commenced, including having to enter judgement in the County Court on one occasion. Lump sums were paid in March 2013 (£2,100), August 2014 (£4,300), May 2016 (£5,680) and September 2018 (£2,965). Between April and September 2015, payments of £100 per month were made which Mr Willis told us (and we accept) were scheduled payments negotiated to avoid further litigation.

88. In respect of Flat 2, a similar pattern is shown. We do not have the early history prior to 2016, save that at that point the balance due was £7,280. Thereafter only two payments were made, both following debt recovery action of £5,960 in June 2016 and £3,965 in September 2018.

89. In relation to Flat 3, we have a statement of account commencing in October 2014 showing a nil balance as at that date. The only credits to that account since have been five monthly payments of £100 each between April and September 2015.

90. We have seen letters from Mr Billen to the debt collectors instructed to collect outstanding service charges dated respectively 14 October 2015 and 20 March 2016 (pages A-92 and A-93) claiming that because there is no lease of Flat 3, no service charge is payable, and a refund of service charges paid for Flat 3 was demanded. This claim is not well founded as section 103 of the 2002 Act requires payment from the freeholder for flats that are not leased.

91. We find that Mr & Mrs Billen and Mrs Kaur persistently delayed payment of service charges demanded from them, without any reasonable excuse. Nothing that we have seen shows any proper legal basis for failure to pay. Had there been a good reason not to pay, this should have been raised in an application to the Tribunal or through the courts.

92. None of the other lessees said to be in arrears with their service charges have offered any explanation for their failure to pay. There is nothing before us that suggests they had a proper basis for this refusal to pay except for the minor criticisms that we ourselves had of the service charge demands, which could easily have been resolved and which were only likely to have had a limited impact on the service charges owed.

The battle for control of the RTM Company

93. The statutory register of members has not been produced to us by either party. We are satisfied that Mr Willis and Ms Simmons are members but that on taking over management, Mr & Mrs Billen (Flat 1 and the freehold), Mrs Kaur and Mr & Mrs Dosanjh were not. In or around

October 2013, these three parties applied to become members. These applications were granted but membership was immediately suspended on the grounds that "the voting right of any member with unagreed service charge arrears or whose conduct has breached any other rules and regulations of either the Lease of the Articles of Association is suspended" (see pages A-128 – 130).

94. At some point in about June 2018, it appears that two requests were made to the RTM Company by Mr Billen's solicitor. We have not seen those requests. Mr Willis responded to both requests in separate letters dated 19 June 2018.

95. The first request, we glean from the content of Mr Willis's reply, (page A-126), was for membership of the RTM Company on behalf of Mr & Mrs Billen in respect of Flats 1 and 3, Mrs Kaur in respect of Flat 2, Mr & Mrs Dosanjh in respect of Flat 11 and Mrs Minhas in respect of Flat 10.

96. Mr Willis accepted the applications from Mr & Mrs Billen in respect of Flat 1, Mrs Kaur in respect of Flat 2, and Mr & Mrs Dosanjh in respect of Flat 11. He requested more information regarding Mrs Minhas's application in order to verify entitlement. He refused separate membership for Mr & Mrs Billen in respect of Flat 3 as they did not hold a qualifying lease, but accepted that "they are as the landlord, entitled to one vote at any meeting of the company in respect of Flat 3". Confusingly, Mr Willis then refused membership in respect of the Billen's freehold interest. For what it is worth, the Tribunal's view is that Mr Willis reached the right result but not quite via the right reasoning. In our view, Mr & Mrs Billen are entitled to a vote for Flat 1 and a vote as landlord of the whole but are not entitled to an additional vote for Flat 3 as it is not leased.

97. The second letter concerned the calling of a company meeting, requisitioned by Mr Boodhoo. We have to make an assumption that Mr Boodhoo was also a member of the RTM Company at this point. The proposed resolution to be put to the members was that Mr & Mrs Billen should both be appointed as directors of the RTM Company.

98. Mr Willis rejected the proposal to call a company meeting (A-124). He said such a resolution would be ineffective because it would be in breach of subsections (a) and (c) of section 303(5) of the Companies Act 2006 due to Mr & Mrs Billen owing substantial arrears of service charge and so having a conflict of interest, which would mean that section 175 of the Companies Act 2006 would prevent them from either attending or voting at board meetings where recovery of arrears, budgets, and proposed maintenance were discussed. The appointment would in consequence be ineffective. Mr Willis also argued that the resolution was vexatious, the Billen's being motivated by personal gain rather than the benefit of the company.

99. Matters then moved forward to 2019. On 1 February 2019, Mrs Dosanjh emailed Warwick Estates to say that she would not be paying her service charge until a meeting was held to discuss concerns.

100. On 4 February 2019 the existing board of the RTM Company appointed Mrs Gill as an additional director. Reading between the lines, we suspect this was because a company meeting had been called for 5 February 2019, We have not seen the notice of that meeting, but we assume it had been served on the directors as it was required to have been. We have seen the minutes of that meeting, which resolved to appoint Mr Billen as a director and remove Mr Willis and Ms Simmons from their positions as directors. The meeting was attended by Mr Boodhoo, Mr Billen, Mr & Mrs Minhas, Mr & Mrs Dosanjh, and Mr Malik. We note that no resolution was passed to remove Mr Willis from the office of Company Secretary, which he held at the time.

101. Mr Willis instructed solicitors to respond to Mr Billen's solicitors. We have one letter from Gurney Harden, solicitors for Mr Willis, dated 7 March 2019. They only comment on the 5 February meeting briefly, simply putting Mr Billen's solicitors on notice that Mr Willis and Ms Simmons dispute their removal as directors. The reason is not explained in this letter, but it would appear to rest on the same arguments used in the June 2018 correspondence concerning section 303(5) and conflicts of interest. What the Gurney Harden letter then discussed is a directors meeting that they say took place on 4 March 2019 at which Mrs Kaur was appointed as a second director. They said that directors meeting was not quorate.

102. On 14 March 2019, Mr Malik phoned Warwick Estates (the managing agent at the time) (page A-143) and told them that the majority of the tenants and the director of the company had decided to stop paying service charges until further notice.

103. Mr Billen's solicitors replied to Gurney Harden's letter of 7 March to accept that the proposed appointment of Mrs Kaur as a second director was not in accordance with the articles, and to say that another member's meeting would therefore be called. They argued that section 175 of the Companies Act 2006 did not prevent Mr Billen from being a director.

104. Gurney Harden duly responded, alleging that Mr Billen had a conflict of interest, that he had made arrangements to become a director in order to avoid his service charge liabilities, that his actions were in bad faith and not in the best interests of the company. It was said that he had promised to write off service charge arrears in return for support for his appointment. Allowing SCML to be struck off was raised and Mr Billen was accused of being in breach of his fiduciary duties. Action was threatened if Mr Billen did not back down.

105. Despite this correspondence, a further company meeting did take place on 28 May 2019 which was attended by Mr Boodhoo, Mr Billen, and Mrs &

Mrs Minhas. Proxy forms had been given by Mrs Kaur, Mr Malik and Mrs Dosanjh. The meeting resolved to appoint Mrs Kaur as a director and to remove Mrs Gill as a director. A board meeting was held the same day which resolved to remove Mr Willis as company secretary and to appoint Peter Butlin in his place. The current managing agents (Warwick Estates) were to be instructed to take no further action to recover service charge arrears until these had been reviewed.

106. In June 2019 both Mr Boodhoo and Mrs Minhas informed Warwick Estates that they were not paying their service charges at the present time.

107. In his witness statement for this application, Mr Billen confirmed at paragraph 19 (page A-403) that "As a director of the RTM, I confirm that all of its debts have been written off and I am told it has no money". We do not have the dates or copies of any documents showing when the decision to write off all debts was made.

108. Mr Willis did not accept that the Respondents had acted lawfully in removing him and Ms Willis as directors and taking control of the RTM Company. He continued to believe that he was a lawful director and the company secretary and there then followed a period when two groups of people were both holding themselves out as the directors of the RTM Company.

109. We have only seen a fraction of the documentation that must exist regarding the conflicting decisions being made. We were told about a dispute regarding the appointment of the managing agents, who in May 2019 were Warwick Estates. It appears that Mr Billen (through his solicitors) tried to terminate their contract on 31 May 2019, and Gurney Harden countermanded that instruction and confirmed they should continue to accept instructions from Mr Willis and Ms Simmons, including bringing proceedings for recovery of service charge arrears from Mr Billen (see A-140 and A-141).

110. As seen above, Mrs Dosanjh, Mr Malik, Mr Boodhoo and Mrs Minhas had all told Warwick Estates by June that they were not going to pay their service charges at the present time. It is evident to us there was a general refusal by the majority of lessees to comply with their legal obligations. We cannot understand why lessees, who had just voted to appoint Mr Billen as the sole director of the RTM Company, should think it was then in their interests not to pay debts due to that company. No management company can manage a multi-tenanted residential unit if the lessees refuse to pay their service charges, and taking this stance was almost bound to result in harm to the very company whose management the majority of the lessees thought they had just changed for the better.

111. In accordance with his belief that he was still a director of the RTM Company, Mr Willis instructed Warwick Estates in November 2019 to bring proceedings against Mr Billen to recover arrears of service charges

and he arranged for accounts to the company to be filed at Companies House in December 2019.

112. There was also a battle for control of the Companies House pass codes to file notices of resignations and appointments of officers of the company. For about a year, filings were made and countermanded. Eventually, Mr Billen managed to obtain control of the electronic filing codes and he and Mrs Kaur were confirmed as the directors of the RTM Company at Companies House, with Mr Butlin being the company secretary, on 25 May 2020. Mr Willis now accepts he has lost de facto control of the RTM Company. He has considered with his advisers whether to commence proceedings under Section 994 of the Companies Act 2006 but he considers this application is the most appropriate way of resolving the management issues at Stoughton Court.

113. We express no view on the machinations regarding control of the RTM Company. Its members have a right to appoint its directors and this Tribunal cannot interfere. We do think that Mr Willis was a little overzealous in suspending membership for some of the Respondents in 2013. We are not convinced of the strength of his argument at that point. Only a court can determine, on the basis of all the evidence, whether the attempted removal and appointment of directors in February and May 2019 were legally effective.

114. What we are able to say is that we regard the actions of Mr Billen and Mrs Kaur in purporting to write off service charge arrears to be a flagrant breach of his duties towards the RTM Company. It is as plain as day that this action unfairly prejudices some lessees over the others. At the hearing, Mr Crowson said that of course the intention was to treat all the lessees equally and those lessees who were in credit would receive a compensating credit to their service charge. We think that is disingenuous. The only effective way to treat all service charge payers equally would be to restore the arrears claims, as otherwise those that have not paid will be in a much better position than those that did pay. We are quite sure that Mr Billen tried to write off service charge arrears in order to obtain a personal financial benefit, and in so doing he substantially weakened the financial position of the RTM Company to which he owed a fiduciary duty, to his own advantage.

Complaints about other acts and behaviour of Mr Billen between 2012 and 2019

115. Mr Willis has raised a number of other acts of Mr Billen that he says have prejudiced the interests of the lessees.

116. There are a series of complaints about use of the car parking area next to the garages on the northern boundary of Stoughton Court. There are five garages there, one of which is within Mr Willis's lease. The other four are not let on long term leases. There is no doubt, as we found above, that

these garages are within the demise of the SCML Lease. Now that SCML are no longer a registered company, Mr Billen has taken control of the garages and the car parking area in front of them for his own commercial benefit. We have seen evidence that he has let them on a number of occasions, and we find this to be the case. We cannot make a finding that he was not entitled to do so because of the uncertainly about any rights that may exist in respect of the SCML Lease. We do make a finding that the commercial users have obstructed the parking area from time to time, in breach certainly of Mr Willis's right of access. Indeed, Mr Freckelton observed during his visit that the building and commercial activity taking place on the parking area was a significant obstruction. Mr Willis may be able to pursue a remedy elsewhere, but we are unable to give this point much weight in considering this application, apart from noting that Mr Billen is insensitive to other people's rights.

117. Of importance is the fact that in recent months Mr Billen has set about converting the basement of Stoughton Court into two flats. Irrespective of the existence of SCML or its leasehold interest, this seems to us to be an interference with the easements granted to all lessees to use the Common Parts contained in the Flat Leases. The lessees' utility meters are located in the basement and access is required to it. As discussed above, ground works for the conversion have prevented proper access to Mr Willis's garage.

118. Mr Willis told us that around £8,000 of the service charge payer's money has been spent in recent years upgrading services in the basement. He believes that fire and health and safety issues arise from the conversion works that Mr Billen has not properly addressed.

119. If SCML were resurrected, and its lease were registered in such a way as to be binding upon Mr & Mrs Billen's freehold interest, it would be the owner of the basement and the full benefit of any development value would accrue to the lessees not Mr Billen (and indeed the same point can be made about the unlet garages).

120. Mr Crowson disputed that the lessees have any rights over the basement. Their rights of access are "in connection with the permitted use" for the Flats, and there is no need for a lessee to access the basement in connection with his or her use of their own flat. We do not accept this point as the utility meters are in the basement.

121. We have also noted Mr Willis's complaint that Mr Billen interfered with an insurance claim that should have been administered by the RTM Company. It is evident from page A-101 that Mr Billen did try and deal directly with the insurer regarding a claim for water damage in respect of a policy of insurance where he was not the insured. Mr Crowson said that he was an interested party and was entitled to make and administer the claim. We do not need to make a finding on this issue, which in the grand

scale of things is only of minor significance. We do note that Mr Billen had a tendency not to communicate or co-operate with Mr Willis.

Matters since May 2019

122. Since Mr Willis lost de facto control of the RTM Company (between about May 2019 and May 2020), he says that maintenance has ceased again. The stairwells are poorly maintained. There are no management notices and no evidence of fire safety checks. The RTM, under the control of Mr Billen, appointed Butlins as property manager, but that firm resigned. No proper service charge demands have been levied. In February 2020, the local authority served an Improvement Notice requiring works to the fire escape. That Notice was not complied with and the council are now intending to do works in default.

123. Mr Crowson responded to say that Butlins have been persuaded to remain as managers. They have contacted the local authority regarding the Improvement Notice and have persuaded them to consider alternatives to repair. There is no imminent danger that the RTM Company may face enforcement proceedings or penalties for non-compliance with the Notice.

Respondents submissions

124. Mr Crowson submitted that there was no need for a management order to be made in this case. The majority of the lessees had decided that Mr Billen was capable of exercising proper control of the RTM Company and he had arranged for a professional manager to be appointed who had taken over and was working hard to manage matters.

125. The lessees supporting Mr Billen had long-standing issues with Mr Willis's management regime. In particular they thought the service charge had been at the higher end of the range of reasonable charges, and they wondered where all the money had gone. They were not provided with management accounts or adequate information. The RTM Company had been run as Mr Willis's personal fiefdom and the lessees were tired of receiving demands for money from him. The service charge demands were badly particularised.

126. Mr Crowson criticised Mr Willis's refusal to admit Mr Billen, Mrs Kaur and Mrs Minhas as members of the RTM Company.

127. After being voted off the Board, Mr Willis had wrongly continued to act as if he was a director, including instigating legal proceedings to recover service charges in November 2019 and filing company accounts in December 2019. He had no authority to do either of these acts.

128. The section 22 notice was meant to contain details of actions that required to be remedied. The notice Mr Willis had served listed matters that were

not capable of remedy. The application required Mr Willis to show fault on the part of somebody. The Respondent he had named was the RTM Company, but he had been the controlling director of that company for the last eight years. He was applying for an order as a consequence of his own defaults.

129. We were urged by Mr Crowson to reject the application.

130. Mr & Mrs Dosanjh, Mrs Minhas, and Mr Boodhoo have all provided written statements to the Tribunal. We have carefully considered the contents of all these statements. The common themes are a lack of trust in Mr Willis as director, a failure to communicate or allow them to be involved in decisions by the RTM Company, and complaints about the level of service charges.

131. All the statements made reference to the unhealthy effect of the feud between Mr Billen and Mr Willis upon the RTM Company, and the need to get beyond that broken relationship for the good of all the lessees.

Discussion

132. Bringing our main findings together from the previous section, and in summary, we have found that:

    a. In 2003 Mr Billen demonstrated that he did not understand the fiduciary duties he had in exercising management of SCML;

    b. the condition of Stoughton Court as at December 2011 was in breach of SCML's covenant at clause 4(a) of the SCML Lease and clause 6(a) of the flat leases. As the sole director of SCML at that time, the person responsible for that breach was Mr Billen;

    c. In 2011 Countrywide were being obstructed in managing Stoughton Court as they would have wished, due to instructions to the contrary from Mr Billen;

    d. When in 2011 Mr Billen told the Leasehold Valuation Tribunal that he had converted Flat 3 into two units by 7 February 2011, he knew that to be an untrue claim;

    e. Mr Billen put his personal interests ahead of the interests of SCML in failing to carry out the required administrative procedures to prevent SCML being struck off the register;

    f. Mr Billen failed to account to the RTM Company for the surplus funds in SCML;

g. Mr & Mrs Billen and Mrs Kaur persistently delayed payment of service charges demanded from them, without any reasonable excuse; and

h. The actions of Mr Billen and Mrs Kaur in purporting to write off service charge arrears in 2019/20 were a flagrant breach of their duties towards the RTM Company and unfairly prejudiced some lessees over others.

133. We do not think that Mr Billen can or should be trusted with the running of a management company as we do not think he is likely to act in the best interests of the company when those interests conflict with his own interests.

134. We have also expressed some criticisms of Mr Willis. We felt that his motivation was sound in that we did not feel at any time that his application was for personal gain. We think he had the interests of the whole of Stoughton Court in mind. We were impressed with his grasp of the facts and the legal issues at stake. However, he has clearly lost the support of the majority of lessees. We did think there was a problem with the service charge reconciliations, though that might have been more the responsibility of the managing agents he appointed rather than his issue. On the question of him continuing to hold himself out as a director of the RTM Company, the majority of votes in the RTM Company were clearly against him and we think he should have accepted that decision earlier or pursued litigation to resolve the correct position.

135. Frankly, Stoughton Court is in a very unenviable position. The current lease structures are far from those intended when the development was set up. There is no contractual arrangement for the maintenance and repair of the structure of the buildings. The ownership and rights over the non-let parts of the building, the garages, and the common areas are far from clear. Normally this will result in the flats being unmortgagable, and so of very much reduced value. We are not even convinced that an RTM Company fully resolves this problem as an RTM Company only takes over the management functions of a landlord or a management company. In this case, the landlord has no management functions, and the management company no longer exists.

136. In addition, the relationships between the lessees at Stoughton Court have clearly broken down, or at least that between Mr Willis and Mr Billen. The majority of the respondents actually see that this is the case and we agree with them that until that conflict is resolved, Stoughton Court cannot be managed properly by either camp. As Mr Boodhoo put it so well:

> "This feud and personal issues between [Mr Willis and Mr Billen] have only exacerbated the plight of Stoughton Court, its financial health and above all impaired the value of our investments."

137. The position of the individual service charge accounts is utterly unsatisfactory at present. The previous accounts will need to be reviewed independently, reconciled against actual outturns for each service charge year, and where lessees owe service charges, those sums should be collected. Any other course of action would be prejudicial to some lessees. We have no confidence that Mr Billen would be able to oversee that process, as the client of the managing agent who would have that task.

138. There is obviously a need to progress maintenance works at Stoughton Court. We thought the 2019 plan was well conceived and it needs to be progressed, or something similar. The aim should be to ensure Stoughton Court is properly managed for the benefit of all its occupants.

139. In our view there is a need to resolve as a matter of urgency whether to make an application for a vesting order so that the SCML Lease, on which so much of the legal underpinning of the rights of lessees rests, can be effectively restored. If an application is made, there is a further urgency to establish whether it can be registered at HM Land Registry, and if so, it will be necessary to establish the extent to which Mr & Mrs Billen would be bound by it. We have no doubt that if successful, these applications would benefit all the lessees significantly, even if they do not see that at this time. We think there is no chance that the currently constituted board of the RTM Company would pursue these applications.

140. We turn back to section 24 of the Act. Bearing in mind all of our comments above, we are satisfied that circumstances exist which make it just and convenient to make a management order under section 24(2)(b), and we therefore **make a management order in respect of Stoughton Court**.

141. It is crucial in our view to resolve the position regarding the SCML Lease one way or the other, to review and improve the financial position of the RTM Company and to put in place a longer term plan for the management of Stoughton Court. We think this is only likely to happen if a management order is made.

142. We approve the manager proposed in the application. She is Lyndsey Cannon-Leach who currently works for Pennycuick Collins in Birmingham. We were able to interview her at the video hearing. We are satisfied that she has the skills, experience, and resources to be able to take on this role. She had not seen Stoughton Court. She told us that she would make early arrangements to meet the lessees, which we were pleased to hear.

143. We listened to Mr Crowson's concerns about this appointment principally focussed on cost and distance. Of course, his client was always entitled to propose a different manager if he so chose. In our view, the proposed costs as set out in the Order are reasonable in the marketplace. We are satisfied

that Ms Cannon-Leach can manage Stoughton Court from Birmingham with the resources at her disposal.

144. There are significant legal issues in play. We were asked to approve the instruction of Weightmans as advisers to the manager. We hope that Weightmans and Ms Cannon-Leach have fully considered whether as advisers to Mr Willis, Weightmans may have a conflict of interest bearing in mind how polarised this case has been. If they think there may be a conflict, we have ensured that the order allows Ms Cannon-Leach to appoint alternative legal advisers of her choosing.

145. If it is necessary to commence court proceedings (other than routine debt collection), we recommend that Ms Cannon-Leach does so on the strength of a favourable opinion from competent and experienced Counsel to the effect that there is a better than even chance of success. We have in mind any litigation that may be necessary to obtain a vesting order in respect of the SCML Lease, and to resolve the impact of any such order obtained upon Mr Billen & Mrs Billen's freehold interest.

146. As a matter of urgency, Ms Cannon-Leach should consider what to do about the ongoing conversion work in the basement. As we have mentioned, it is not clear that Mr & Mrs Billen have a right to do these works as they might conflict with easements granted in the Flat Leases. It is also not clear who owns the basement. We have made clear in the Management Order that Ms Cannon-Leach is appointed manager of the whole of the buildings and adjoining land at Stoughton Court, including the basement.

147. For much the same reasons, there is a provision in the Order allowing Ms Cannon-Leach to collect the rental income from the garages. She will need to resolve ownership of the garages as quickly as possible as the orders we make must be proportional, and if it transpires that SCML or the RTM Company cannot make any claim to the garages, they will need to be released back to Mr & Mrs Billen as soon as is practicable.

148. We specifically draw Ms Cannon-Leach's attention to the existence of an Improvement Notice. Early steps will be needed to obtain a copy and ensure that the lessees' interests are protected in respect of it.

149. For the avoidance of doubt, we have made it clear that Mr & Mrs Billen as freeholders must contribute their share towards service charges for Flat 3 in the same way as they have been under section 103 of the 2002 Act.

150. To give Ms Cannon-Leach as much control as possible at this stage, we have included a provision giving her control over any consents required to make alterations at Stoughton Court.

151. As there are urgent and complex issues to address, we would like a first report earlier than in 12 months as was suggested in the draft order. We

require that report in six months, though of course if an urgent matter crops up, Ms Cannon-Leach can apply for directions at any time.

152. We were told that the RTM Company had no funds, in Mr Billen's statement dated 11 May 2020. At the hearing, we were told that Butlins had now collected some £4,000. Under the terms of the Order, that money could be paid to the Manager. However, there may be some difficulties recovering it, or it may have been spent. It is important that the Manager is immediately put in funds to enable her to start work, and all parties will have to expect an immediate demand for payment of a service charge to put the Manager in funds. Obviously that money will be held for the benefit of the service charge payers to be used in paying the reasonable and proper expenses under the Management Order.

153. We remind all parties of their rights to apply for a variation of the Management Order under the provisions of section 24(9) and (9A) that we have quoted above.

Costs

154. Mr Willis has made an application for an order under section 20C of the Act which would have the effect of preventing any of the costs incurred, or to be incurred, by the RTM Company in these proceedings from being taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application. Mr Willis specified himself, Ms Simmons, Mr Malik and Mr & Mrs Gill at the hearing.

155. We have no information regarding the funding of the Respondents legal costs. However, Mr Crowson accepted that neither the RTM Company nor Mr & Mrs Billen have an ability to recover costs under any leases in any event.

156. Out of an abundance of caution, we make the order requested, as on the merits we see no reason why the Applicants should contribute to another parties' costs when they have succeeded in the application. We order that any costs incurred in relation to this application may not be taken into account in determining any service charge payable by the persons listed in paragraph 154 above.

Appeal

157. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that

party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)