

Payments made to a manager appointed under the LTA 1987 are service charges



There are various options open to tenants of flats that are dissatisfied with the management of their building. These include three different methods of removing the management functions from the current party responsible for the same. Such party is often the landlord, but it could also be a third party management company or management trustee.

The three options are:

- an application for the appointment of a manager by the First Tier Tribunal under the Landlord and Tenant Act 1987 (“the 1987 Act”);
- a Right to Manage claim under the Commonhold and Leasehold Reform Act 2002; and
- a collective enfranchisement claim to acquire the freehold (and intervening interests) of the building under the Leasehold Reform, Housing and Urban Development Act 1993.

In all three situations, there will continue to be maintenance and repairs, etc. in respect of the building and the tenants will continue to pay these costs.

However, a major difference between the 1987 Act option and the other options is that the manager appointed by the Tribunal derives their powers from the Management Order itself rather than the respective leases of the flats.

In a recent case the issue to be determined was how to treat payments and arrears made and accrued during the period of appointment of a manager after the termination of their appointment.



The *Oung Lin Chaun-Hui* case

In *Oung Lin Chaun-Hui & Others v K Group Holdings Inc & Others* [2021] EWCA Civ 403, which concerned a property on Park Lane, London, the flat owners had successfully applied to the Tribunal for the appointment of a manager under section 24 of the 1987 Act. During the period of appointment, significant arrears of service charge accrued.

Following the termination of the manager's role, the third-party maintenance trustee took back control of the management functions. The defaulting flat owners were then pursued for the outstanding arrears that had accrued during the period of the manager's appointment.

The flat owners argued that there was no entitlement to pursue such arrears as the payments were made under the terms of the Management Order and were, therefore, not service charges under s.18 of the Landlord and Tenant Act 1985 ("the 1985 Act").

What did the Court of Appeal say?

The Court of Appeal held that the payments were indeed service charges under the 1985 Act. The sums payable by each flat owner were made as the tenant of a dwelling in respect of matters specified in s.18(1)(a) of the 1985 Act and which were variable in amount according to the "relevant costs" incurred on the landlord's behalf.

The manager satisfied the extended definition of "landlord" in s.30 because, by virtue of the Management Order, he was "a person who has a right to enforce payment of a service charge".

The Court of Appeal also held that the arrears and right to sue for the same automatically reverted to the maintenance trustee on termination of the manager's appointment. There was no risk of double recovery because the manager's right to sue for the arrears came to an end with the termination of its appointment.

However, where there is a surplus at the end of the manager's appointment, the manager will need to prepare an account and seek direction from the Tribunal as to how to deal with the funds, they do not automatically vest in the landlord.

What does this decision mean?

This decision provides useful guidance and will ensure continuity over the recoverability of service charge arrears after the end of a manager's appointment under the 1987 Act.

How we can help

If you would like advice in relation to leasehold management issues, please contact our [leasehold enfranchisement](#) team.

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