13194

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case references	**:**	**LON/00BG/LVM/2018/0005 LON/00BG/LVM/2018/0006 & LON/00BG/LVM/2018/0014**
Property	**:**	**Canary Riverside Estate, Westferry Circus, London E14**
Applicant in LON/00BG/LVM/2018/0005 represented by Downs LLP	**:**	**Alan Coates (tribunal-appointed manager) ("the Applicant")**
Respondents in LON/00BG/LVM/2018/0005 represented by Trowers & Hamlins LLP **(Octagon and CREM being applicants in LON/00BG/LVM/2018/0006 and LON/00BG/LVM/2018/0014)**		**(1) Octagon Overseas Limited ("Octagon")** **(2) Canary Riverside Estate Management Limited ("CREM")** **(3) YFSCR Limited** **(4) Yianis Hotels Limited** **(5) Palace Church 3 Limited** **("CREM/Octagon")**
Interested persons in LON/00BG/LVM/2018/0005 and respondents in LON/00BG/LVM/2018/0006 and LON/00BG/LVM/2018/0014))	**:**	**Section 24 applicant leaseholders**
Type of application	**:**	**Variation of order for appointment of a manager**
Tribunal	**:**	**(1) Judge Amran Vance** **(2) Mr L Jarero, BSc FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Dates of Hearing	**:**	**3 and 4 December 2018**

DECISION DATED 4 DECEMBER 2018

Corrected 12 February 2019 under rule 50 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

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Summary of the tribunal's decisions

1. We do not consider it just and convenient to make any variations to the existing Management Order except in respect of the provision of documents to meet statutory obligations (paragraphs 52-54 below).

2. Our preliminary view as to the variation sought regarding arrangements for payment of debts pre-dating Mr Coates' appointment as Manager is set out at paragraphs 44-51 below.

3. The parties should seek to agree a varied form of Management Order giving effect to this decision and should submit it to the tribunal within 14 days of issue of this decision. If agreement is not reached regarding arrangements for payment of debts, then the issue will be determined by the tribunal as indicated below.

NB: the wording of paragraph 64 of the decision has been amended to correct an ambiguity identified by the section 24 leaseholders that could have resulted in a misinterpretation of the tribunal's decision.

Background

4. This decision concerns several issues resulting from three applications to vary the terms of the Management Order ("MO") appointing Mr Alan Coates as the manager of residential properties, common parts, car parking spaces, and shared services in the mixed residential and commercial estate in Westferry Circus, at Canary Wharf, known as Canary Riverside ("the Estate") under the provisions of s.24 Landlord and Tenant Act 1987 ("the 1987 Act"). The MO was initially made by the tribunal on 5 August 2016 (amended following a decision on review dated 15 September 2016) and varied by the tribunal on 29 September 2017 and 18 July 2018.

5. Page numbers in bold and in square brackets refer to pages in the various hearing bundles before the tribunal. The use of the letters "**RS**" refers to CREM/Octagon's supplemental bundle. Otherwise, references are to the two-volume main bundle.

6. The first application before us (LON/00BG/LVM/2018/0005) was made by Mr Coates on 6 February 2018. The second application was made by Octagon and CREM on 9 February 2018 (LON/00BG/LVM/2018/006). The third (LON/00BG/LVM/2018/0014) was made by Octagon and CREM on 27 June 2018.

7. The applications were initially heard by the tribunal on 16, 17 and 18 July 2018 and led to the tribunal varying the MO for the reasons given in its decision dated 18 July 2018. However, some of the issues raised in the

applications were postponed over to a restored hearing which took place on 3 and 4 December 2018. The remaining issues are summarised in two Scott Schedules prepared by the parties **[158A-158U]** and their respective positions were expanded on in witness statements provided by Mr Coates **[254]** and Mr Chris Christou **[719]**, in-house legal counsel for Yianis Group, the parent company of Octagon and CREM. The director of Yianis Group is Mr Christodoulou, who is also the leaseholder of two residential flats on the Estate.

8. The remaining issues in respect of Mr Coates' application concerned: (a) the provision of service areas for use by him in exercising his functions as a Manager of the Estate; and (b) his request that a penal notice be attached to the MO due to asserted non-compliance by CREM with the terms of the previous MO.

9. At the hearing before us, Ms Cattermole, counsel for Mr Coates stated that the application for a penal notice could not be dealt with as Mr Coates' recent illness and hospitalisation had caused delay in him being able to provide instructions to his solicitors regarding deadlines specified in paragraph 30 of the MO, as inserted by the decision of 18 July 2018. Paragraph 30 stated that if agreement between the parties concerning the historic financial and service charge position for the Estate was not reached by 28 August 2018, CREM was to write to its former managing agents, Marathon Estates Limited ("MEL") requiring records to be produced by 18 September 2018, failing which CREM would issue proceedings against MEL. Ms Cattermole proposed varying the MO to extend the two dates in question.

10. The position of Mr Bates, counsel for CREM/Octagon, was that there was no merit in the penal notice application. He states in his skeleton argument that CREM had sent a letter before action to MEL **[RS 197]** and that if no reply was received by 4 December 2018, CREM it would voluntarily issue proceedings against MEL at its own expense.

11. Given the potential litigation against MEL we make no order in respect of the application for a penal notice. If the issue with MEL is not resolved and Mr Coates wishes to pursue the application further, he may to apply to the tribunal for it to be restored.

12. Several of the outstanding issues in CREM/Octagon's application were agreed by the parties before the start of the hearing and others were agreed during the hearing. The agreed issues were items numbered 1, 3,5,6,7,9,11, 12 and 13 in the Scott Schedule which left issues 2, 4, 8 and 10 for us to determine, namely:

    (a) whether CREM/Octagon should be entitled to recover their costs of complying with the MO;

(b) issues concerning pre-appointment debts;

(c) issues concerning CREM/Octagon's statutory duties; and

(d) the mechanics for reimbursement of insurance costs.

The Law

13. The relevant sections of Section 24 of the 1987 Act provide as follows:

(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) – (3) ....

(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) – (8) ....

(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 ....

(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) - (11) ....

The Hearing

14. In addition to Ms Cattermole and Mr Bates, also present at the hearing were: Ms Jezard, representative for the s.24 leaseholders; Mr Storer, Ms Reader and Ms McCabe, solicitors for Mr Coates; and Mr Marsden and Ms Willis, solicitors for CREM/Octagon. Several lessees attended as did Mr Coates and his assistant, Mr Brown. Mr Christou was also present. None of the representatives considered that oral evidence was required, and none was heard. Regard was had, however, to the two witness statements provided by Mr Coates and Mr Christou.

15. At the start of the hearing, Ms Cattermole informed the tribunal that Mr Coates had very recently become aware of an application to the tribunal made by Palm Tree Holdings Ltd, seeking Mr Coates removal as Manager. She proposed that the hearing be postponed so that Mr Coates could consider his position in light of this new application. An adjournment was opposed by Mr Bates and was refused by us. We saw no good reason to delay the determination in respect of the remaining issues on the

applications and to postpone the hearing at such a late stage would result in an unjustifiable waste of the tribunal's resources and the incurring of unnecessary legal costs by CREM/Octagon, who were fully prepared for a two-day hearing.

Manager's application - service areas

16. In his application, Mr Coates sought a direction and/or a variation of the MO, empowering him to exclude Octagon and CREM, their officers, employees and/or agents from every part of the Estate that he and his staff are authorised by the tribunal to occupy for the purposes of management and over which he reasonably requires exclusive use.

17. The background to this request is set out in Mr Coates' second witness statement dated 9 November 2018 **[254]**. In that statement he explains that he requires, but does not have, an appropriate onsite office from which he can manage the Estate. He says that he is unable to have any office equipment such as IT equipment, copiers, and printers on site and that there is nowhere for his staff to keep paper records or to sit at desks from which to work. Nor, he says, is there anywhere for him to hold confidential meetings. Further, he says that there are now inadequate staff welfare facilities available (toilet, showering, changing, and locker facilities) for his staff.

18. He argues that since his appointment CREM/Octagon have deliberately prevented him from using areas on the Estate previously used for Estate management and staff welfare by letting those areas to third parties. He explains that the Estate was built with an Estate Office on the ground floor of Eaton House, which was used by MEL until September 2015, when it was then leased to Tower Quays Ltd. After that date MEL carried out their management functions from a 'Lock Up Room', adjacent to the concierge's desk in Eaton House. This area was leased to MEL on 28 September 2018, but Mr Coates believes it may subsequently have been let to Tower Quays Ltd. He is now unable to use the Lock Up Room as it has been let to a third party.

19. Mr Coates previously had use of a Loading Bay Office from which his operatives would receive deliveries for the Estate, and which was also used for storage purposes. However, in January 2017 CREM granted a license of this area to Westminster Management Services Ltd ("WMS"), meaning, he says, that his staff now receive deliveries in a noisy and smelly gantry area, adjacent to a rubbish compactor.

20. As for staff welfare facilities, he states that these were previously used by 18 site staff, including security staff, cleaners and loading bay operatives, as well as by contractors. Then, in December 2016, the area in which the facilities are located was let by CREM to Riverside Car Wash. Although there is a toilet available for his staff to use near the Estate Security Office

and WCs present in the concierge areas of the various towers on the Estate, he considers this provision to be inadequate.

21. Mr Coates also complains that in March 2018, CREM moved documents including site plans, electrical wiring plans, and drains plans from a purpose-built documents room, to a different documents room on the Estate. Although he has access to this new room, he says that it is cramped, making it difficult to view documents, and that there are no facilities available for copying of documents. He also asserts that historically, parking facilities were provided to all staff free of charge, but that in December 2016 some of the parking spaces were let by CREM to Riverside Car Wash, Tower Quays and WMS, following which his staff were prevented from parking on site except in the areas designated for public parking. He states that these spaces cost £28 for a period of over 10 hours, reduced at weekends to £22. Mr Coates' argues that he needs to provide his staff with free parking, and that they should not have to pay to park in areas where previously MEL's staff had not been charged to do so.

22. At paragraph 29 of his statement Mr Coates states that the only room that he has any degree of control over, and which he can secure, is the Estate Security Office. He also states that is from this small room that he manages the Estate and all its staff.

23. Ms Cattermole argued that Mr Coates required suitable accommodation to be able to effectively exercise his functions as Manager and that the tribunal needed to impose a framework that allowed him to do so. It was her case that the areas referred to in Mr Coates' witness statement fell within the definition of "common parts" in the residential leases and that CREM/Octagon had deliberately sought to prevent Mr Coates from being able to use them.

24. However, she conceded, for the purposes of this application, that this tribunal had no jurisdiction to require CREM/Octagon to determine or terminate the leases or licenses it entered into with third parties, and nor was she asking us to make such an order. Rather, what Mr Coates was asking for was for the tribunal to issue directions requiring: (a) the provision of a written report by CREM/Octagon identifying areas that might be suitable for Mr Coates to use; (b) an opportunity for Mr Coates to respond; and (c) for the tribunal to then direct what area or areas should be provided to him. She also conceded that the tribunal had no power to direct CREM/Octagon to enter into leases or licences for land in its control.

25. In her skeleton argument, Ms Cattermole suggested that accommodation should be provided to Mr Coates free of charge, as that was the arrangement previously enjoyed by MEL. However, in oral submissions, she acknowledged that Mr Coates would be willing to pay an appropriate rent under a lease or licence of suitable accommodation and that

CREM/Octagon should therefore provide details of any such proposed charges when providing their report.

26. Both Ms Cattermole and Ms Jezard also contended that CREM/Octagon had failed to comply with direction 5(b) of the tribunal's directions of 18 July 2018 which required them to provide copies of all correspondence between: CREM/Octagon and/or their agents; and between CREM/Octagon and the said lessees/licensees, prior to and in relation to the grant of the said leases/licences (including, for the avoidance of doubt, all attendance notes and/or other records of conversations between such parties). Ms Cattermole accepted that unredacted copies of the leases and licences had been disclosed but submitted that Mr Coates had received sparse correspondence and attendance notes for only three areas. Ms Cattermole and Ms Jezard therefore requested that the tribunal issue further directions, including requiring compliance by CREM/Octagon with direction 5(b).

27. Mr Bates' position was that given Ms Cattermole's concession regarding the tribunal's jurisdiction the issue of directions would be pointless. In his submission, a landlord was entitled to make use of land within its ownership as it saw fit, subject to the rights of third parties under any leases or licences. The fact that CREM/Octagon had different arrangements for management prior to Mr Coates appointment was irrelevant. They were entitled to enter into leases or licences of the areas in question, even if they constituted common parts.

28. We accept that the Old Estate Office, the Lock Up Room, the Estate Security Office, the Loading Bay Office and the Staff Welfare facilities fall within the definition of Building Common Parts at clause 1.7 of the residential leases [page **1286** of the hearing bundle for the July hearing] which, inter alia, reads:

> "The entrance halls passages landings staircases refuse facilities and other parts within the Building which are available for use by the Tenants or occupiers of any two or more of the Dwellings or Commercial Units therein including any lifts if any and the glass in the windows of such common parts **and such other parts of the Building not intended to be comprised in the leases of the Dwellings or Commercial units** and the structural parts of the Building....and all external parts of the Building."

[Our emphasis added]

29. In oral argument, Mr Bates appeared to accept that these areas constituted Building Common Parts but asserted that this did not prevent the landlord from dealing with those areas. He submitted that the land in question was retained land within the landlord's ownership, who was entitled to deal with it as it saw fit, subject to the rights of third parties under their leases

or licences. The landlord was therefore entitled to enter into the leases and licences for the areas in question, and the fact that they were used for the purposes of management of the Estate prior to Mr Coates' appointment was irrelevant.

30. In our view, a landlord's ability to deal with the common parts of a building may not be as unfettered as Mr Bates suggested. As well such ability being subject to existing third party rights, such as easements granted to residential leaseholders, the Upper Tribunal decision in *Sennadine Properties Ltd v Heelis* [2015] UKUT 55 (LC), para 52, appears to us to be authority for the proposition that in certain circumstances a tribunal may be justified in granting powers to a s.24 manager over premises let by a landlord to a third party. However, at paragraph 51 of his decision, Martin Roger QC made it clear that that exceptional circumstances must be present before a tribunal should make an order that directly intervenes in the relationship between a landlord and a third party.

31. Given Ms Cattermole's' concessions, this was not a point on which we heard oral argument and it is not a question that requires our determination. If we were required to do so, it is our view that there are not exceptional circumstances present that would justify interfering with the leases and licences CREM entered into with third parties. We recognise that the current arrangements are inconvenient to him and that it would be preferable if a larger on-site office were available for his use and the use of his staff. However, he has the use of the Security Office and he has access to the new documents room. We accept that the apparent lack of IT resources is likely to be frustrating, but the evidence does not establish that this is substantially interfering with his ability to effectively manage the Estate. For example, he appears to have been able to set service charge budgets, collect in service charges and accept deliveries without any evident difficulties. In addition, despite the asserted problems with viewing and accessing documents in the current documents room, we note from the application for dispensation made under s.20ZA of the 1985 Act in application *LON/00BG/LDC/2016/0141* that Mr Coates has manged to commission several reports into the electricity metering on the Estate and that no mention is made in his evidence in that application about problems viewing or copying of documents held in the documents room. As to the staff welfare facilities, again we accept this is inconvenient for staff, but it is not suggested that any serious health and safety or equality issues arise from the existing arrangements.

32. We agree with Mr Bates that to issue the directions sought by Ms Cattermole would be a pointless exercise given his instructions that there are no available premises on the Estate that could be provided to Mr Coates, in addition to the Security Office he is currently using. If Mr Coates considers there is suitable accommodation available that is not let or licensed to third parties, he should ask CREM/Octagon to let him use it. If such an approach is rebuffed, he is entitled to apply to the tribunal seeking an appropriate variation of the MO. We see no reason why Mr Coates

cannot identify such accommodation, if it exists. He has been the manager of the Estate for over two years and he was managing director of the company, JSSP Limited, who previously managed the Estate. He should, therefore, be very familiar with the accommodation potentially available to him. He also has access to the plans located in the documents room.

33. In our view it cannot be properly inferred from the chronology of leases and licenses exhibited to Mr Coates' witness statement **[284-5]** that CREM/Octagon have deliberately prevented Mr Coates from utilising these areas in order to frustrate his management as was submitted by Ms Cattermole and Ms Jezard. Whilst multiple areas were let or licensed prior to and after Mr Coates commencing his appointment, CREM's actions need to be seen in the context of Mr Coates acknowledgment, at paragraph 12 of his witness statement, that he was specifically asked by Mr Jarero at the tribunal hearing in 2016, prior to his appointment, what he would do if CREM did not rent any office space to him, to which he responded that he would rent an office nearby or work remotely from his office in Croydon. He now suggests that this answer related to him personally and not to office space required for his staff and equipment. However, we do not consider there could have been any doubt in his mind that Mr Jarero's question was directed to all accommodation required by him and his staff, given that the question was asked as part of the tribunal's examination of his suitability to be appointed as manager of the Estate.

34. In addition, it is clear from the correspondence sent by CREM/Octagon' solicitors to Mr Coates' solicitors that repeated offers were made to grant a license to Mr Coates to use the Security Office as well as additional areas. An offer of a license for the Security Office was made in letters from Trowers & Hamlins LLP dated 11 October 2016 **[RS3]**; 18 October 2016 **[RS5]**; 27 October 2016 **[RS 20]** which also referred to the possibility of granting a license over additional rooms; 2 November 2016 **[RS27]**; 7 November 2016 which refers to the possibility of granting a license for a room next to the loading bay **[RS32]**; 22 November 2016 **[RS16]**; 30 November 2016 **[RS44]**; and 6 December 2016 **[RS59]**. On 12 December 2016, after Mr Coates confirmed he was interested in taking a license of the Security Office, Trowers and Hamlins wrote to Downs LLP, Mr Coates' solicitors **[66]** offering a license at a nominal rent, but on the basis that he paid for electricity used and for the legal costs of granting a license. That offer was repeated on 28 February 2017 **[RS99]** and 17 May 2017 **[110]**.

35. None of these offers were accepted by Mr Coates and most of the letters sent by Trowers and Hamlins were letters chasing a response. It was not until 12 October 2017 **[RS126]** that Downs LLP responded substantively. In a letter sent that day to Trowers & Hamlins, Downs proposed that Mr Coates pay the sum of £12,000 for a license of the security offices, 10 car parking spaces, the plans room, the loading bay office, staff breakout rooms and bathrooms. Trowers & Hamlins responded on 17 November 2017, **[RS130]** stating that the commercial rate for the parking spaces was £3,000 per space but that to be reasonable their clients had previously offered them at a reduced rate of £2,000 per space, or £1,000 per space

plus the service charges payable. As to the other rooms referred to in the letter of 12 October 2017, the response was that a license of these areas had previously been offered to Mr Coates, but as the offers made had not been accepted, the areas were let to third parties. This response is reflected in an earlier letter sent by Trowers & Hamlins to Downs LLP on 24 April 2017 **[RS103]** in which it was said that as its clients' offers of licenses over certain areas had not been accepted that the areas in question had been leased or licensed out to other parties.

36. Our review of this correspondence indicates that rather than being deliberately obstructive as suggested, CREM/Octagon made repeated offers to Mr Coates to grant a license to him, not only in respect of the Security Office, but also other areas he wanted to use, and that these offers were not substantively addressed until Downs' letter of 12 October 2017, by which time some of the additional areas had been the subject of licences entered into such as the Riverside Carwash licence dated 19 December 2016 **[285]** and the car parking spaces. We do not, therefore, consider CREM/Octagon acted unreasonably when it decided to let or license these areas to third parties.

37. Mr Coates previously proposed using a portakabin from which he could carry out management functions **[RS96]**. At the hearing, Mr Bates told us that this was not feasible, although we were not clear why that was the case. We suggest that this proposal be reconsidered by the parties as a possible way to assist Mr Coates. We see no reason why such a license should not be at a rent, albeit that CREM/Octagon may be willing to offer a reduction from a full commercial rent.

38. We do not agree that Mr Coates' staff are entitled to free parking just because that was the arrangement that MEL previously had with CREM. It seems to us that CREM's offers to let parking spaces at a reduced rent was a genuine offer to resolve this issue and that the cost, when divided between the leaseholders paying the residential service charge, would not be an onerous one.

39. We are pleased that at the hearing before us agreement was finally reached regarding the license for the Security Office, with Mr Coates agreeing to pay the legal costs of the drafting of a license, capped at £500 plus VAT.

40. Ms Jezard raised concerns that the service charges paid for by the residential leaseholders included the cost of water, electricity and other services provided to those third parties who had been granted leases or licenses by CREM. It appears to us that any concerns over the payability of service charges by the leaseholders, including whether costs have been reasonably incurred or properly demanded from leaseholders according to the terms of their lease, should be taken forward in an application under s.27A of the 1985 Act.

Should CREM/Octagon be entitled to recover their costs of complying with the MO?

41. In his second witness statement **[719]** Mr Christou contends that CREM/Octagon should be entitled to recover its costs incurred in complying with the MO. Mr Bates distilled this down to two issues:

    (a) costs incurred in the handover to Mr Coates, for example the costs of provision of documentation. The amount of such costs has not been quantified but were estimated to be in the range of about £10,000 - £20,000;

    (b) the reasonable cost of complying with requests for the provision of documentation or information requested by Mr Coates or his authorised third parties. By way of example, Mr Christou suggests that Mr Coates has repeatedly raised issues or requested documents that have already been provided to him, and CREM/Octagon should be compensated for the costs incurred in responding.

42. We agree with Ms Cattermole that the tribunal does not have jurisdiction to make the order sought. S.24(5)(c) specifies when making an order under s.24 that the tribunal may order that remuneration is 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. It makes no provision for the tribunal to order payment to be made by a manager *to a landlord.*

43. Whilst the power under s.24(5) is without prejudice to the generality of subsection (4) the latter subsection does not assist CREM/Octagon. This is because subsection (4) concerns "an order under this section" which, by virtue of subsection (1) means an order (whether interlocutory or final) appointing a manager.

44. If we are wrong in that interpretation, and we do have jurisdiction, then we refuse to make the requested order. We see no justification for CREM/Octagon being entitled to recover its handover costs given that the appointment of Mr Coates was a result of its own default in management of the Estate. The same is true in respect of its costs of responding to requests for the provision of documentation or information made by Mr Coates, or third parties authorised by him. Mr Bates conceded that such costs are not likely to be high and no great difficulties were expected. We reject his characterisation of the burden of having to incur these costs as 'punitive'. They are not punitive, they are costs incurred as a consequence of CREM's breach of its management obligations. Therefore, if we have the power to vary the MO under subsection 9A to make the order sought we decline to do so, as we do not consider it would be just and convenient in all the circumstances to make such an order.

Pre-appointment debts

45. This issue concerns what Mr Bates described as a stubborn core of debts said to have been incurred prior to Mr Coates' appointment. In his witness statement **[268]** Mr Coates describes the outstanding debts as being relatively small.

46. It was common ground that following the making of the MO appointing Mr Coates, his counsel, Ms Gourlay, agreed in correspondence that as the MO provided for Mr Coates to have the power to collect service charges pre-dating his appointment, he should also be liable to pay debts that accrued before his appointment, provided that such sums were properly due **[769].** Mr Coates's states in his witness statement that whilst he has paid numerous debts since he was appointed, the debts in issue had not been paid because he had concerns that some of the sums demanded were incorrect, not properly evidenced or concerned works that might not have been carried out to a reasonable standard. He has therefore queried the invoices in question with the relevant companies.

47. CREM/Octagon' position was that it was unreasonable that it was being pursued for payment by the companies that had issued these invoices, given that CREM had paid Mr Coates all of the service charge and reserve fund money due to him. Mr Bates explained that one of the companies had gone so far as to issue a claim against CREM, to which Mr Coates had been joined as a defendant.

48. Mr Coates' position was that he was unable to verify that all service charge monies due to him had been handed over to him by CREM, and that he was not going to be able to do so until the longstanding issue about handover of historic service charge and accounting documentation from MEL was resolved. Ms Jezard agreed, arguing that no decision should be taken on this aspect of the application until this documentation was made available and until Mr Coates was satisfied that all service charge monies due had been paid.

49. Mr Bates proposed that if Mr Coates was unwilling to pay the debts in issue that he could transfer the money required to do so to his clients and they would pay them. Alternatively, he could provide his clients with an indemnity.

50. Ms Cattermole pointed out that paragraph 13 of the MO entitles Mr Coates to check demands for payments in relation to payments for goods, services, equipment and plant in relation to repairs and maintenance **[123]** and that he could not simply hand over service charge funds to CREM/Octagon as these were trust fund monies. She argued that the MO should be amended to state that Mr Coates is liable for these identified pre-appointment debts and that he would "handle" any ensuing litigation. In response to this proposal, Mr Bates queried whether it meant that Mr Coates would defend legal proceedings at his own cost. Ms Cattermole said that she would take instructions on this point and the issue was

temporarily parked. However, it was not returned to before the hearing ended which we believe was an oversight by the tribunal and the parties' representatives.

51. Our preliminary view is that we agree with Ms Cattermole that it would be inappropriate for us to vary the MO or to otherwise direct that Mr Coates simply transfer funds to CREM/Octagon to discharge these debts. The monies are, as she submitted, subject to a statutory trust, and we consider it correct that Mr Coates should be able to dispute payment if, for example, he believed work had not been carried out to a satisfactory standard. However, we recognise that the current situation is causing CREM/Octagon considerable inconvenience. Our preliminary view is that it would be just and convenient for the MO to be amended to provide that: (a) Mr Coates is liable to pay the specific pre-appointment debts in issue, subject to a right to challenge the sums demanded; and (b) that if legal proceedings have been, or are issued, against either or both CREM/Octagon in respect of any of the specified debts, that Mr Coates agrees to indemnify Octagon/CREM against such claims and the costs of such claims. Alternatively, Mr Coates could agree to take over proceedings in place of CREM/Octagon.

52. As the parties' representatives did not make final submissions on this issue, it would be wrong for us to determine it. However, given the proposals made at the hearing, and our preliminary view as indicated in the preceding paragraph, it may be that this issue could possibly be agreed between the parties. If it is, they should provide a form of agreed wording for the variation of the MO for the tribunal's approval within 14 days of issue of this decision. However, if agreement is not reached, written submissions on this point should be provided by that date and the tribunal will determine the matter in a separate decision.

Statutory obligations

53. CREM/Octagon sought that an obligation be inserted into the MO requiring Mr Coates to supply them with documents they require in order to comply with any statutory obligations. Mr Christou states **[724]** that this variation was sought because of problems it experienced with Mr Coates' reluctance to provide information CREM needed to comply with its statutory obligations under the Carbon-Reduction Commitment ("CRC") Scheme.

54. Ms Cattermole explained that Mr Coates' query over the CRC Scheme, which now appears to have been resolved, was whether the statutory obligation lay with CREM or with him. She confirmed that Mr Coates had no objection in principle to providing CREM/Octagon with documentation to meet their statutory obligations. However, she argued that the proposed variation was too broad, and did not identify the specific statutory obligations it was directed to. Ms Cattermole was also concerned that any

variation to the MO must not be in terms that enabled CREM to subjectively identify what constituted a statutory obligation

55. It is regrettable that the relationship between the parties is such that what should have been a straightforward issue to resolve, namely the provision of information regarding the CRC Scheme, has resulted in this application for a variation. In our determination, and to hopefully avoid future disputes, we consider it just and convenient to add a form of wording to the MO to require both Mr Coates and CREM/Octagon to comply with all reasonable requests for documents and/or information required by any of them in order to comply with a statutory obligation. If, in future an issue arises as to which party is under a specific statutory obligation, or what documents need to be provided to meet those obligations, it is incumbent on all parties to act reasonably in resolving the matter.

56. We see no reason why this variation to the Management Order would result in a recurrence of the circumstances which led to the order originally being made.

Reimbursement of insurance costs

57. In his witness statement **[725]** Mr Christou states that CREM place insurance for Canary Riverside on 1 April of every year. This tribunal have previously decided that Mr Coates must reimburse CREM for the residential part of the insurance, which costs around £380,000 per annum, in bi-annual instalments. However, Mr Christou complains that Mr Coates has failed to pay these instalments, including an invoice for the current 6-month insurance payment sent to Mr Coates on 21 September 2018 **[781]** but which remains unpaid. This has led CREM to set-off the insurance sums demanded from Mr Coates against service charges that he has demanded from CREM.

58. Mr Coates' position was that he should only have to pay insurance costs once service charges for these costs are collected in from the residential leaseholders. Otherwise, he says, it will mean that he is required to pay towards the insurance costs when he has not received the funds to do so from leaseholders. He asserts that the service charge fund is already depleted because CREM are in service charge arrears of £99,345.10 and that Mr Christodoulou has arrears of £58,910.85. He also complains that CREM/Octagon have refused to provide him details of how the insurance costs have been calculated, because they consider that only the leaseholders can challenge these costs and that he, as only the collector of sums due from leaseholders, is not entitled to do so.

59. Mr Bates submitted that Mr Coates should pay the insurance costs when demanded, and that he can operate a float or reserve fund, and demand advance payments from leaseholders, in order to assist with cash flow. He said that this is what CREM did prior to Mr Coates' appointment and that operating a float or reserve fund is permissible by clause 23.1.3.2 of the

residential leases, which includes within the definition of Building Expenditure recoverable from the leaseholders:

> "such sums as the Landlord shall consider desirable to set aside from time to time in accordance with the principles of good estate management (which setting aside shall be deemed to be an item of expenditure actually incurred) for the purpose of providing for periodically recurring items of expenditure..........."

60. He submitted that clause 23.1.3.2 should be included in the Management Order as a duty binding on Mr Coates. He also confirmed that CREM agreed that the leaseholders were entitled to challenge the insurance costs demanded from Mr Coates.

61. Ms Cattermole stated that Mr Coates was content to use a float but would only do so once the service charge arrears owed by CREM were paid.

62. Ms Jezard's position was that CREM should bill leaseholders directly for the insurance costs and that there was no excuse for CREM not providing full disclosure to the Manager of documents underlying the insurance costs demanded. She also agreed that Mr Coates should be entitled to set off insurance costs against service charge arrears owed by CREM.

63. In our determination it is not just and convenient to vary the order to include clause 23.1.3.2 as a duty. Paragraph 5 of the MO states that Mr Coates is to manage the Estate in accordance with the landlord's obligations set out in the residential leases. He therefore has the power to set up a reserve fund or float. Whilst we consider it eminently sensible that he does so, thereby enabling advance payments to be demanded from leaseholders, we do not consider it appropriate to impose a duty on him to do so. To do so, would, in our view, be a disproportionate interference by the tribunal with his discretionary powers as Manager and would constitute an undesirable involvement by this tribunal in the day to day management of the Estate.

64. However, the current impasse is thoroughly undesirable and is, once again, indicative of the poor relationship between the parties. In our view, there is no justification, and nor is it helpful, for either party to apply an equitable set-off in respect of these insurance costs. It is critical that the Building is insured, and we consider that Mr Coates should pay the sums demanded, collecting in advance service charge payments from leaseholders in order to do so. If he, or a leaseholder disputes the payability of the costs, or how they have been apportioned, this can be challenged, if necessary, through an application to this tribunal under s.27A of the 1985 Act. If a leaseholder, including CREM, is in arrears, then Mr Coates can seek to recover the sums payable through proceedings. Similarly, to facilitate good estate management, CREM should ~~either~~ pay the service charges demanded from

it ~~or~~and, if ~~it disputes~~ payability is disputed, it may ~~should~~ seek a determination from this tribunal as to its liability.

65. We see no reason why CREM/Octagon should refuse to provide Mr Coates with an explanation and underlying documentation as to how the insurance costs have been apportioned. If it has not already provided this information, then it should do so. Although ultimately, it will be the residential leaseholders that pay these costs, it is clearly sensible for Mr Coates, as manager of the Estate, to be provided with such information so that he can explain how service charges have been calculated when demanding payment from leaseholders.

66. We disagree with Ms Jezard that CREM should bill leaseholders individually. Collection of service charges from the leaseholders is Mr Coates' responsibility and it is on that basis that the MO was made.

Amran Vance **25 January 2019**

Corrected on 12 February 2019

Annex - Rights of Appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).