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** **("the Respondents")**
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	**:**	**16, 17 and 18 July 2018**

DECISION DATED 18 JULY 2018

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Summary of the tribunal's decisions

1. We consider it just and convenient to make the variations to the current Management Order as indicated with tracked changes in the version annexed hereto as Annex 2. A version of the final order without tracked changes appears at Annex 3.

2. We are satisfied that the variations of the Management Order will not result in a recurrence of the circumstances which led to the order originally being made.

Background

3. This decision concerns two applications to vary the terms of a Management Order ("MO") 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. The MO appoints 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 dispute over the management of the Estate is long-running and has, on three occasions, been the subject of determinations by the Upper Tribunal (Lands Chamber).

4. On 1 November 2016, the Deputy President refused an application for permission to appeal the MO (see *Octagon Overseas v Various Leaseholders of Canary Riverside* [2016] UKUT 0470 (LC)).

5. On 22 March 2017, in *Octagon Overseas Limited v Coates [2017]* UKUT 0190 (LC) the Deputy President allowed an appeal by Octagon, the owner of the freehold interest in the Estate, and by the head-lessee, CREM, against directions given by the FTT concerning insurance of the Estate.

6. Most recently, on 1 February 2018, in *Alan Coates v Marathon Estates Limited* [2018] UKUT 0031 (LC) the Deputy President refused the Manager's application for a penal notice to be attached to an order of this tribunal dated 26 June 2017, requiring Marathon Estates Limited ("Marathon"), the property management company who previously acted as an agent for CREM in providing services and collecting service charges from the residential and commercial leaseholders at Canary Riverside, to produce computer records which the Manager considered necessary to enable him to carry out his functions. The Deputy President determined that this tribunal had no power to refer non-compliance with the order of 26 June to the Upper Tribunal, which could not, in those circumstances, exercise its own powers under section 25 of the 1987 Act. At paragraph 100 of his judgment, the Deputy President commented that if the Manager still wished to pursue Marathon over the release of the computer records, he should first ask this tribunal to add a penal notice to the order of 26 June

and then seek the consent of the County Court under section 176C Commonhold and Leasehold Reform Act 2002 to enforce the order in the same way as an order of the County Court. He also suggested that before doing so, the Manager should consider whether at the same time as, or instead of, adopting that course, he should seek to enforce paragraphs 4 and 5(b) of the Management Order itself against CREM, the respondent's principal.

7. The first application before us (LON/00BG/LVM/2018/0005) was made by Mr Coates on 6 February 2018 **[1/38-49]**. In summary, the key variations to the MO sought by the Manager were to provide for, or to clarify, that under the terms of the MO:

    (a) he was empowered to exclude Octagon and CREM, their officers, employees and/or agents from every part of Canary Riverside which the Manager and his staff are authorised by the tribunal to occupy for the purposes of management over which he reasonably requires exclusive use;

    (b) he could register as a Receiver Manager for Canary Riverside with HM Revenue and Customs in order to obtain a VAT registration facility and number;

    (c) he was entitled to enter into contracts extending beyond the term of the Management Order. This related to wayleaves and contracts concerning lift maintenance;

    (d) he was permitted to carry out works to the roof or exterior of the residential parts of the Estate;

    (e) he was empowered to obtain public liability and employers liability insurance;

    (f) he is responsible for the management of the residential leasehold properties located at Eaton House on the Estate known as Circus Apartments.

    (g) the duration of his appointment as Manager is extended to 10 years in place of the three years commencing 1 September 2017 ordered by the tribunal in its decision of 29 September 2017

8. The Manager's application also sought that a penal notice be attached to the MO due to asserted non-compliance by CREM with the terms of the previous MO. Reliance was placed on the decision of the Deputy President in *Alan Coates v Marathon Estates Limited.*

9. The second application before us was made by Octagon and CREM on 9 February 2018 (LON/00BG/LVM/2018/006) and sought a variation to make it clear that paragraph 17 of the MO dated 29 September 2017, which provided for the Manager to register the MO against relevant leasehold titles at HM Land Registry, must not be by way of a Restriction against the landlord's titles.

10. On 9 July 2018, the tribunal had previously directed it would consider whether a second application to vary the MO, issued by Octagon and CREM on 23 June 2018 (LON/00BG/LVM/2018/0014), would be heard together with the two applications currently before it, at the start of the hearing on 16 July 2018, following oral representations from all parties, and that, if not, further directions would be issued. In the event, we adjourned both the 9 February 2018 and 23 June 2018 applications with further directions, to be heard on 3 and 4 December 2018. Also adjourned were those aspects of the Manager's application of 6 February 2018 that related to the Manager's asserted need for exclusive occupation of certain areas of the Estate for him and his staff as well as his application for a penal notice to be attached to the MO.

The Law

11. Section 24 (9) Landlord and Tenant Act 1987 provides as follows:

    (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.

The Hearing and the Tribunal's Reasons for its Decisions.

12. At the hearing, the Manager was represented by Mr Isaac and Ms Cattermole of counsel. Mr Bates, of counsel, represented Octagon and CREM. Ms Jezard represented the s.24 applicant leaseholders. Also present were Mr Storar and Ms Reeder from the Manager's solicitors and Mr Marsden and Ms Wills from the solicitors acting for Octagon and CREM. Mr Broome from HML Group was present as were several leaseholders. namely, Dr Steele (151 Berkeley Tower), Ms Altschuler (141 Berkeley Tower), and Mr Kevin Bell (26 Hanover House).

13. Counsel for the parties provided skeleton arguments in advance of the hearing. Ms Jezard had not, but we read the s.24 applicant leaseholders'

written statement of case dated 2 July 2018 **[1/122]** prior to commencement of the hearing.

14. At the start of the hearing Mr Bates applied to adjourn the hearing. His application was opposed by Mr Isaac and Ms Jezard. Mr Bates relied upon two grounds in support of his application. He argued that:

    (a) the s.24 applicant leaseholders outstanding application for permission to appeal the tribunal's decision of 25 May 2018, in which it reviewed its decision of 29 September 2017, operates at important a level of principle, namely, whether a MO can interfere with proprietary rights enjoyed by a landlord. Mr Bates' position was that it would be premature to determine the applications before this tribunal until the outcome of any appeal before the Upper Tribunal; and

    (b) the bundles prepared by the Manager's solicitors had been received a day later than directed and some material was missing including correspondence that his clients wished to be included. Mr Bates' submitted that the sheer volume of material that he had to read on short notice meant that it was not practicable or fair for the hearing to proceed.

15. We refused the adjournment request. We considered that the point under appeal is a discrete issue, namely whether this tribunal can direct that a function enjoyed by a landlord as a proprietary interest can, as a matter of law, be transferred to a manager and, if so, whether doing so was justified on the evidence before the tribunal. Nor were we satisfied that even if the issue had the wider impact suggested by Mr Bates, that this was a reason to adjourn the hearing. In our view, an Upper Tribunal decision on this point was likely to be of limited impact, if at all, on the specific matters that we had to determine. The late submission of the hearing bundles was regrettable but this was a long-running dispute where the parties should be familiar with much of the documentation. Counsel had the weekend to read the bundles and, in our view, an adjournment was inappropriate in circumstances where the parties, at considerable expense, had prepared for a four-day hearing. Bundles with the missing correspondence were being prepared by Mr Bates' clerks and, we were told, would be with us within a few hours. We were satisfied that the hearing should proceed but said if Mr Bates required more time to read the documents in the bundles, we would be prepared to adjourn until 2pm. That invitation was declined by Mr Bates.

16. We then proceeded to hear submissions from the parties as to the variations proposed by the Manager, as identified in the Scott Schedule prepared by the parties in accordance with our directions of 6 March 2018 **[1/78]**. Submissions were made as to whether the roofs and exterior of buildings on the Estate fell within the definition of "common parts" in the MO and therefore fell within the Manager's responsibilities in terms of repair and maintenance. We also heard submissions on whether Circus Apartments formed part of the Estate to be managed by Mr Coates.

17. After the lunch break on 16 July 2018, Mr Bates stated that initial, but hopeful, discussions had taken place over lunch and that it was possible that agreement could be reached to dispose of the applications before the tribunal.

18. We granted an initial adjournment of an hour, and then, at the request of Mr Bates and Mr Isaac, granted a further adjournment until 10 am on the second day of the hearing to facilitate further discussions as it appeared likely that this might resolve or narrow the issues in dispute between them. Ms Jezard had concerns about being excluded from these discussions. However, it was our view that the Manager and the landlord were entitled to seek to reach agreement between themselves, without her being present, given that they were the only two parties who had live applications to vary the MO before us, albeit that she, as the representative of an Interested Person, was entitled to make representations to us concerning any agreement reached between them concerning the variation of the MO before we approved any variation.

19. At the start of the second day of the hearing we were informed by Mr Isaac that a number of matters had been agreed between him and Mr Bates and that they proposed drafting an amended form of MO for consideration by the tribunal. We adjourned until the afternoon to allow them to do so and the amended draft MO was then emailed to us for consideration. A copy was also passed to Ms Jezard for her review, following which we indicated that we were content with the proposed variations subject to any comments from Ms Jezard. We invited her to identify, in turn, all the variations over which she had concerns.

20. Ms Jezard first raised a general point which was that what the s.24 leaseholders wanted was for there to be clarity over the terms of the MO so that there was no need for a further hearing in a few months to deal with another application for a variation of the terms of the MO. Some of the variations she agreed with. However, she raised specific concerns regarding the variations described in sub-headings below. Under those sub-headings we set out her concerns, followed by our determination on each point.

21. Some of the variations sought concerned typographical errors and non-controversial changes which were not objected to by Ms Jezard. We do not refer to these below as we are satisfied that it is just and convenient to make these variations so as to ensure that proper effect is given to the MO.

22. Further, we are satisfied that there is nothing to suggest that the variations to the Management Order made in the annexed version will result in a recurrence of the circumstances which led to the order being made.

23. In addition, we are satisfied that it is appropriate to vary the MO to extend the term of Mr Coates' appointment to five years commencing on 1 October 2016. This was agreed by all parties and in our view, it is just and convenient to do so, in order to ensure that Mr Coates has sufficient time to resolve the problems that exist with securing documentation regarding

historic service charges and so as to ensure proper and effective management of the Estate.

Insurance

24. Paragraph 7A of the final revised order provides for: (i) the Manager to procure his own employer's liability insurance (recoverable through the service charge); (ii) Octagon/CREM to insure the Estate and to recover the residential element of that insurance from the Manager; and (iii) Octagon/CREM to procure public liability insurance, which must name the Manager, and have a value of not less than £25,000,000, the costs of which are also to be recoverable from the Manager. Provided (iii) is complied with Octagon/CREM are not required to give any insurance indemnity to the Manager.

25. Ms Jezard proposed that the MO include a requirement for the leaseholders to be provided with a schedule of the reinstatement value for the individual residential blocks on the Estate that underlies the buildings insurance premium payable. Mr Bates' position was that this was not a point that had been raised before the start of the hearing but that, having taken instructions, his clients considered that the s.24 applicant leaseholders should write to them to request a copy and that he did not see any reason why this would not be provided. Mr Isaac's position was neutral as his client had no role in placing the insurance, or providing details of the insurance to leaseholders. His only role was to collect the residents' share of the insurance premium and pass it on to the landlord.

26. In our determination, it is just and convenient to make the variation agreed by Mr Bates and Mr Isaacs. The variation, in our view correctly reflects the decision of the Upper Tribunal in *Octagon Overseas Limited v Coates*, and the subsequent decision of this tribunal dated 29 September 2017, that it is the landlord's responsibility to insure the buildings, common parts and shared service areas that comprise the Estate, and that the costs incurred are payable by the Manager. However, it should be noted that paragraph 44 of the tribunal's decision of 29 September 2017 records that the landlord is not entitled to recover the cost of insuring any office, parking area or other area (including storage facilities) to which the Manager has no right of access and which may be let under a commercial lease, license or other occupational agreement, except in respect of parking spaces which are the subject of leases to residential units.

27. We do not consider it just and convenient to include the wording sought by Ms Jezard as this was not an issue raised by the leaseholders before the hearing. Whilst we agree that they should be entitled to have sight of such a schedule, we consider the appropriate way forward would be for a written request to be made to the landlord, as suggested by Mr Bates. We would expect such a request to be granted, but if it is not, then the leaseholders are entitled to make an application to this tribunal seeking a direction that it be provided. Although we hope that it would be unnecessary, they also have the right to pursue an application to this tribunal under s.27A

Landlord & Tenant Act 1985 if they consider the costs of insurance are not payable by them or are have been unreasonably incurred.

Registration of the Order at HM Land Registry and Assignments

28. Paragraph 7A of the final revised order provides for the parties to request HM Land Registry to retain a copy of the MO on its system for the relevant title numbers so that a copy is obtainable by third parties. It also provides for CREM to:

    (a) notify the Manager within three working days of any request that they receive for consent to assign any sublease granted out of their title or any indication of an assignment;

    (b) notify such proposed assignee that the Management Order is in place and that any questions over the management of the Estate, including service charges shall be directed to the Manager;

    (c) provide the proposed assignee with the correct contact details for the Manager;

    (d) promptly provide to the Manager copies of transfer documents which they receive;

    (e) make it a condition of any assignment that any service charge arrears are discharged or an undertaking from the proposed assignor to that effect is given (where permissible under the terms of the lease and reasonable to do so);

    (f) provide the Manager with details of any address, including any address for service in England or Wales which has been provided as part of that assignment process when it becomes aware of any assignment.

29. Ms Jezard raised a problem concerning companies registered in the British Virgin Islands. She considered that there should be provision in the MO that any residential lease assignment by the landlord to an overseas body, particularly in the BVI, should be subject to the requirement for provision of a UK registered office address so that the Manager can send service charge demands to that address.

30. Mr Isaac acknowledged that there has been a practical problem with assignments to some BVI-registered companies who have not paid service charges due, leading to significant arrears developing. He had therefore, originally, asked for a variation to the MO requiring CREM to impose a condition upon assignment that service charge arrears be paid up to date as at the date of assignment. However, Mr Bates had informed him, and he concurred, that there is no requirement in the residential leases to obtain the landlord's consent to assign the lease. As such, he agreed that there is no basis on which CREM or Octagon could impose such a condition.

31. In our view, that is clearly correct. Paragraph 11 of Part Three of the residential leases **[10/2832]** deals with assignments and underlettings and does not contain a requirement to obtain the landlord's consent to assignment. However, the amendment to the MO agreed by CREM now makes it a condition of any assignment that any service charge arrears are discharged, or an undertaking from the proposed assignor provided, *where permissible under the terms of the lease and reasonable to do so*. This, Mr Bates pointed out, is because although the landlord cannot impose conditions on assignment in respect of the residential leases, it can do so under the terms of the leases for the commercial and Circus Apartment tenants.

32. In our determination it is just and convenient to make the amendments agreed by Mr Bates and Mr Isaac in respect of paragraph 17 of the MO. These appear to be sensible and practical proposals designed to tackle difficulties that the Manager has experienced in managing the Estate. Ms Jezard did not object to these variations but sought additional provisions in respect of BVI companies. For the reasons advanced by Mr Bates and agreed by Mr Isaac, we do not consider it just and convenient to make those variations. The residential leases make no provision for landlord's consent to assign and, as a matter of law, we do not consider we can impose an obligation to secure that consent upon third parties given the absence of such a requirement in the residential leases.

Quarterly Reports by the Manager to Octagon/CREM

33. Ms Jezard raised a query concerning paragraph 11 of the schedule of functions and services attached to the amended MO, which inserted provision for the Manager to provide a report to Octagon and CREM, on a quarterly basis, in the form of a "Property Report" attached to the MO which, as far as residential properties are concerned, requires the Manager to provide details of the rent payable and any arrears of rent or service charges owed by any tenant under a lease where the tenant is in arrears of 30 days or more and the arrears are in excess of £5,000, together with details of any steps taken to recover them.

34. Mr Bates sought this insertion to assist CREM in complying with its obligations under its loan obligations. Mr Isaac's agreed that some of the information required to be included in the report was not within CREM's knowledge but might be within the Manager's and that is why the variation had been agreed. Ms Jezard did not oppose the variation per se but considered that the cost of providing this information should not be paid by the leaseholders. Mr Bates and Mr Isaac agreed, and the variation was amended to reflect this.

35. In our determination, it is just and convenient to make the variation agreed by Mr Bates and Mr Isaacs. The Property Report is an extract from the 'Santander' loan agreement entered into by CREM amongst others **[3440]** and, in our view, the provision of this information by the Manager is reasonable.

Inspection of Documents by CREM/Mr John Christodoulou

36. Paragraph 27 of the schedule of functions and services (which became paragraph 28 in the final version of the order) reflected the agreement reached between Mr Bates and Mr Isaac concerning a mechanism whereby CREM and Mr Christodoulou, the owner of Yianis Group, and also a leaseholder of a flat in the Estate, were to be allowed the opportunity to inspect documents supporting the residential service charge accounts for the year ending 31 March 2017.

37. Mr Bates explained that CREM and the Manager had previously disagreed over what CREM were entitled to see under the terms of the MO and that, separately, Mr Christodoulou, in his personal capacity as a leaseholder, had also disagreed with the Manager as to what he was entitled to see. According to Mr Bates, Mr Christodoulou was now able to start criminal proceedings for breach of a Notice served under s.22 of the Landlord and Tenant Act 1985 and what was being proposed was a mechanism whereby both he and CREM could inspect the underlying documents and resolve this issue.

38. Ms Jezard's objection to the inclusion of this wording was that she did not consider CREM or Mr Christodoulou should be entitled to have access to these documents until after the leaseholders had access to the documents underlying the 2013, 2014, 2015 and 2016 accounts.

39. In our determination it is just and convenient to make this variation. It was apparent to us that in the course of this hearing both Mr Bates and Mr Isaac and, no doubt, Ms Cattermole, had made considerable efforts to narrow the issues in dispute between their respective clients. Given the long and litigious history concerning the management of this Estate this was, we anticipate, not an easy task. The approach, is however, a welcome one.

40. At the start of this hearing the Manager and CREM/Octagon adopted fundamentally differing positions regarding each other's application to vary the MO. Very little between them was agreed. That changed over the lunch break on the first day of the hearing when a dialogue between the two parties began. Mr Isaac's stated on the second day of the hearing that in seeking to agree a form of order the parties were seeking to put behind them, to as great an extent as possible, the serious and ongoing disagreements between Mr Coates and CREM and Octagon which had inevitably cost the lessees money in terms of service charge for legal expenses. By the third day, an agreed form of MO was provided to the tribunal.

41. Against this background, we determine that it is just and convenient to include this variation. Whilst, arguably, the issue could have been dealt with by way of a direction by the tribunal, rather than including the mechanism in the schedule of functions and services to the MO, we see no reason to exclude the provision from the MO if it gives effect to the agreement reached between the landlord and the Manager.

42. As to Ms Jezard's objection, she was not seeking disclosure of the underlying documentation supporting the residential service charge accounts for the year ending 31 March 2017 but, rather, documentation relating to the four previous service charge years. That, however is a separate issue and, in our view, is one appears to be inextricably linked with the problems that the Manager has had in obtaining documentation from Marathon, an issue that the parties have sought to address at paragraphs 29 and 30 of the final order, described below and is not a reason to refuse this variation.

43. It is the Manager's position that the tribunal's order of 26 June 2017, in which it was ordered that Marathon *"must release that computer, the software and all electronic records kept within that system, together with any other electrical or electronic equipment paid for by the service charge funds of the Canary Riverside Estate"* has not been complied with.

44. That CREM have a responsibility to assist the Manager in securing this information is made clear by paragraph 43 of the decision in *Alan Coates v Marathon Estates Limited* where the Deputy President said as follows:

> 43. " *I have no doubt that the Management Order has not yet fully been complied with. By paragraph 4 of that Order CREM and its agents, who include the respondent, were directed to provide "reasonable assistance and cooperation to the Manager in pursuance of his duties and powers." Those duties include preparing an annual service charge budget, administering the service charge, demanding and collecting service charges and preparing service charge accounts. If, as the Manager complains, as is obviously the case, and as the respondent does not seriously dispute, those tasks are made more difficult, time consuming and expensive by the absence of information in the form of usable electronic data, the Manager is entitled to the reasonable assistance of CREM and the respondent in obtaining access to that data."*

45. We see no reason to doubt Mr Bates' submission that the insertion of paragraphs 29 and 30 to the MO are an attempt by CREM to address this impasse and it is to those paragraphs that we now turn.

Meeting of Accountants and potential action against Marathon

46. The variations to paragraph 28 and 29 of the schedule of functions and services (which became paragraphs 29 and 30 in the final version of the order), agreed by Mr Bates and Mr Isaac, provide for accountants for CREM and the Manager to meet by 14 August 2018, on a without prejudice basis, to try and agree or narrow the financial/service charge position regarding the Estate. They also provide that if agreement was not reached by 28 August 2018, then CREM, by no later than 4 September 2018, are to write to Marathon, requiring it to provide, in an electronic format, usable by the Manager, all records in relation to the Estate stored digitally by Marathon in or conjunction with the QUBE software system used by

Marathon for the holding and processing of service charge information. The variations further provide that if Marathon do not provide these records by 18 September 2018, that CREM will forthwith, and at its own cost, commence and pursue judgment proceedings against Marathon for the said records.

47. Ms Jezard considered these variations to be pointless and that it was incredible that CREM was likely to act against Marathon, a company that she asserted was an associated company of the 5th Respondent, Yiannis Hotels Limited. She acknowledged that Mr Coates and his accountants needed to have proper closing balances as at 30 September 2016, and that existing service charge debt needed to be pursued by him, but she said that she did not know if pursuing the QUBE software was going to provide this.

48. In our determination, it is just and convenient to make this variation to the MO. Whilst we acknowledge the s.24 applicant leaseholders' scepticism, as stated above, we see no reason to doubt that this is a genuine attempt by the parties to resolve the problem surrounding the handover of documentation by Marathon. As Mr Bates told us, in somewhat colourful language, he was prepared to "throw Marathon under the bus" because his client did not want to be subject to a penal notice. As we indicated at the hearing, the making of a penal notice on this issue is a real possibility given the Upper Tribunal decision in *Alan Coates v Marathon Estates Limited* and we accept Mr Bates' submission that what has been agreed is appropriate action to avoid this scenario arising.

Broadband and/or digital data services

49. Paragraph 31 of the schedule of functions and services provides for CREM and Octagon to take reasonable steps (including those identified by the Manager) as necessary to facilitate the provision of broadband and/or digital data services to occupiers of the Estate, including, where required and appropriate, wayleave agreements. Ms Jezard expressed concerns that the proposed wording did not indicate that it was Manager's role to discharge repair and maintenance obligations relating to wayleave or similar agreements and, in response, Mr Isaac and Mr Bates agreed to include such wording in paragraph 32 of the final order annexed to this decision. Ms Jezard was content with the amended wording and we determine that it just and convenient to make this variation to address the difficulties that the Manager has asserted he has experienced in securing wayleave agreements for such services.

Registration with HMRC

50. Paragraph 32 of the schedule of functions and services provides for the Manager to be entitled to register at HMRC as a Receiver Manager for the sole purpose of obtaining a specific and separate VAT registration facility and VAT number for the VAT element of the shared service charges collected and discharged. No objection to this variation was made by Ms Jezard and we determine it is just and convenient to make the variation

sought by the Manager as the same appears to us to be appropriate for the effective management of the service charge.

Circus Apartments

51. As stated above, in the Manager's application to vary the MO, he contended that a variation was required to make it clear that he is responsible for the management of the residential leasehold properties located at Eaton House on the Estate known as Circus Apartments. His proposal was that specific reference to Circus Apartments should be included in paragraph 1 of the MO, which defines the areas over which the Manager exercises management functions and that Circus Apartments should be removed from the schedule of commercial lessees annexed to the MO.

52. At the start of the hearing Mr Isaac argued that there was a clear finding in paragraph 108 of the tribunal's original decision of 5 August 2016 that the Manager was to manage Circus Apartments. Mr Bates submitted that it was his recollection that at the hearing that led to the tribunal varying the MO on 29 September 2017, a considerable amount of time was spent arguing that the MO should be varied to remove Circus Apartments from the scope of the Manager's responsibilities under the MO. His position was that paragraph 108 of the decision of 5 August 2016 had been overtaken by the revised MO approved by the tribunal on 29 September 2017, which omitted Circus Apartments from paragraph 1 of the MO and included them in the schedule of commercial lessees at the end of the MO.

53. Over a short adjournment, on the third day of the hearing, we reviewed the tribunal's case file, to see if we could identify what had occurred in respect of the Circus Apartments issue prior to the 29 September 2017 determination. As we subsequently indicated to the parties, what appears to have happened is that, following the hearing of the variation application, the Manager and the landlord attempted to agree the revised form of MO. The question of whether Circus Apartments was within the Manager's responsibilities was the subject of correspondence between the Manager's solicitors and the landlord's solicitors. The landlord's solicitors, unlike the Manager's solicitors, listed Circus Apartments in the schedule of commercial lessees in the draft MO supplied to the tribunal. The correctness of doing so was disputed by the Manager's solicitors in correspondence to the tribunal. When the tribunal finally approved the Management Order it reflected the amendments sought by Mr Bates. Circus Apartments did not appear in paragraph 1 of the MO but was listed in the schedule of commercial lessees. However, the tribunal's written decision of 29 September did not explain why Mr Bates' version of the MO was approved rather than the Manager's version.

54. Mr Isaac's position changed following his negotiations with Mr Bates. He informed us that he no longer wished to pursue his requested variations to the MO regarding Circus Apartments. He explained that there is ongoing litigation between Circus and CREM concerning Circus Apartments and that the Manager does not want to take sides in that dispute or to aid one

side or the other. Rather, he wants to maintain independence. Mr Isaac's said that CREM had expressed concern that the clarification being sought might impact on the dispute between CREM and Circus and that, in light of that, the Manager had decided not to seek any variation to the MO as currently drafted.

55. However, he confirmed that the Manager: (a) has been collecting service charges from Circus Apartments and intends to continue to do so; and (b) has been, and will continue to provide, appropriate management to Circus Apartments.

56. Mr Jezard's position was that the variations to the MO initially sought by the Manager should still be made, even though the Manager no longer wished them, namely that Circus Apartments should be moved out of the schedule of commercial lessees and the wording originally proposed by the manager at paragraph 1(a) should be inserted.

57. We do not consider that it is just and convenient to make those variations in circumstances where the Manager is no longer pursuing them and there is no application before us from the s.24 applicant leaseholders seeking a variation to the MO.

58. Whilst we have jurisdiction to correct a defective MO of our own volition, it does not appear to us that the MO, as currently drafted is defective. Although Circus Apartments are listed in the schedule of commercial lessees, the Manager is responsible for collecting service charges from the commercial lessees in respect of services shared with the residential lessees and in relation the freeholder's repairing obligations contained in the head lease. In addition, paragraph 4(e) provides that the Manager has the power and duty to carry out the landlord's obligations contained in the commercial leases in relation to the landlord's obligation to provide services and its repair and maintenance obligations.

59. The s.24 leaseholders primary concern appeared to be a potential shortfall in the service charge accounts for the Estate if the Manager was not collecting service charges from Circus Apartments. However, Mr Isaacs assured us that the Manager has been doing so and that he will continue to do so. Similarly, the Manager has confirmed that he has been providing appropriate management functions to Circus Apartments in accordance with the MO as currently drafted.

60. We agree that the tribunal did not provide written reasons for including Circus Apartments in the schedule of commercial lessees in its written decision of 29 September 2017 and that is unfortunate. However, it seems to us that the evidence indicates that, as Mr Bates suggested, as Mr Jarero recollected and as Ms Jezard agreed was possible, this was an issue that was debated at length at the hearing prior to the issue of the decision of 29 September 2017 and the varied MO. If any party wished to appeal that decision in respect of Circus Apartments then it was open to them to do so, but that did not happen.

61. If the s.24 applicant leaseholders consider that the present MO is not working then it is open to them to make their own application to vary the MO, but such an application will need to be supported by evidence explaining why a variation is required. Norton Rose, solicitors, who represent Circus Apartments would need to be given notice of such an application.

62. In their written statement of case the s.24 applicant leaseholders suggest that the MO should make it explicit that the Manager has responsibility for *all* services to the commercial tenants, as included in the service charge accounts, except for buildings insurance, including Circus Apartments. It appears that they are suggesting this includes the Hotel on the Estate. Again, if the s.24 applicant leaseholders wish to pursue such an application then they can do so, but we consider this requires them to make their own application which will require notice to the affected commercial lessees.

Next Steps

63. As stated above, we adjourned both the 9 February 2018 and 23 June 2018 applications, as well as the Manager's application for exclusive occupation of certain areas of the Estate and for a penal notice to be attached to the MO, over to 3 and 4 December 2018. We recognise that the need for a further hearing may be a source of frustration for the s.24 applicant leaseholders. However, the adjournment of these applications was requested by both Mr Bates and Mr Issacs on the basis that their clients wished to continue talking to narrow the issues in dispute between them and to allow for the meeting of their clients' accountants in August 2018 and, if needed, for action to be taken against Marathon. We considered it appropriate to grant their request for the reasons advanced and so that the constructive dialogue in evidence at this hearing could continue.

Amran Vance **27 July 2018**