



Residents' Association of Canary Riverside
Berkeley Tower Canary Riverside
48 Westferry Circus
London
E14 8RP

Your ref:

Our ref: LON/00BG/LVM/2018/0005

Date: 20 February 2019

Dear Sirs

RE: Landlord & Tenant Act 1987 - Section 24(9)

PREMISES: Canary Riverside, Westferry Circus, London, E14

Judge Vance has asked me to write to you as follows:

I have considered: (a) the emails received from Freeths and Mr Bates dated 14 February 2019; (b) the submissions on the Draft Management Order received from Downs LLP on 14 February 2019; and (c) the travelling drafts of the revised Management Order ("MO"). The comments below are based on the draft provided by Freeths and Mr Bates which appears to be the latest version of the travelling draft.

Firstly, there appears to be general confusion between the determinations made by the tribunal in response to the parties' applications to vary the MO and comments made by the tribunal in its decision that indicate its view as to steps the parties could or should take to resolve issues in dispute. Comments made by the tribunal are not findings or determinations, they reflect the opinion of the tribunal and should not be incorporated in the revised MO.

We set out our comments regarding each of the proposed revisions to the MO below. These have been discussed with Mr Jarero and reflect both our views. We consider it appropriate to issue a short supplemental decision concerning the amendments to be made to the MO in due course, once we have the parties' comments in response to this letter.

Except where directed otherwise below, Freeths, Downs and the s.24 leaseholders should provide their written comments to the tribunal and to each other by **1 March 2019**.

Amendments to the MO

Interpretation, para (n) – definition of "Service Charges"

According to my notes, this amendment was not referred to at the hearing but it appears from the Scott Schedule that it may be agreed – is that correct and, if not, why is disputed?

Paragraph 4(f) – pre-appointment debts

We consider the indemnity should be in respect of “reasonable” costs incurred for the reasons given by Ms Cattermole. Whilst the Manager has the benefit of a sub-indemnity from the leaseholders, as Mr Bates point out, we consider this should only apply in respect of costs reasonably incurred. In addition, we consider the obligation to indemnify should be contingent on the giving of notice of the proceedings to the Manager by CREM/Octagon. If the parties can agree a suitable form of wording they should submit the same to the tribunal.

Paragraph 4(i) – Manager’s powers concerning legal proceedings

According to my notes, this amendment was not argued at the hearing but it appears from the Scott Schedule that it may be agreed – is that correct and, if not, why is disputed?

Paragraph 7A – Insurance

7A(i)

The question of ancillary insurance costs was not argued at the hearing and, on a quick perusal, I cannot see them referred to in the two witness statements of Mr Christou included in the hearing bundles. This question was not therefore determined by the tribunal. Can Freeths please: (a) specify, making references to page numbers in the hearing bundles where an application for this amendment was made; and all documents relied upon in support of the amendment sought; and (b) provide any written submissions in support of the amendment requested. It should provide this written confirmation to the tribunal and the other parties by **1 March 2019**. The Manager and the s.24 leaseholders should provide any submissions in response by **15 March 2019** and the tribunal will decide the point in its supplemental decision.

7A(v) and (vi)

The only determination made by the tribunal was that recorded at paragraph 63 of the decision, namely that it was not just and convenient to vary the MO to include clause 23.1.3.2 of the Lease as a duty binding upon the Manager.

The comments made at paragraph 64 are not a determination. As stated in the second line of that paragraph it was the tribunal’s view that there was no justification in either party applying an equitable set-off in respect of the insurance costs. Reference to the Manager or the leaseholder being entitled to challenge insurance costs under s.27A of the 1985 Act is, as Mr Bates points out, a statement of law. We do not, therefore, consider the proposed inclusion of clause 7A(vi) proposed by Ms Cattermole to be appropriate.

Nor is the reference in the revised paragraph 64 to CREM paying the service charges demanded, and its ability to pursue an application to this tribunal a determination. Again, it is a comment by the tribunal.

As no determination was made in paragraph 64 we do not consider there is any point in Mr Bates request for permission to appeal that paragraph. He should please

confirm, given our indication that the wording of the paragraph is not determinative, whether that application for permission is maintained and, if so, why. It should be noted that we were not intending to suggest that a service charge demand issued by the Manager had to be paid before it could be challenged.

Turning to the proposed amendment 7A(v), paragraph 65 of the decision was the tribunal's comment and not a determination and, as such, we do not consider its inclusion in the revised MO is warranted. The Manager does not appear to have made his own application for variation of the Management Order to impose an obligation on CREM/Octagon for provision of insurance documentation and, if that is the case, it does not appear to be an issue on which the tribunal was required to make a determination. If any party considers we were obliged to determine the point it should seek permission to appeal the decision, explaining why and referring to the relevant documents included in the hearing bundle. We will then consider if we should revise the decision.

Paragraph 11

Is Mr Bates' proposed amendment agreed by the Manager?

Paragraph 17(i)

This corrective amendment appears non-controversial and we agree to its inclusion.

Paragraph 17A

This amendment is agreed and will be included in the revised MO.

Schedule – Functions and Services – paras 2 and 3

These amendments are inappropriate for the reasons stated above; paragraph 64 of the decision was not a determination.

Schedule – Functions and Services – para 5

Is this amendment agreed by the Manager? We do not recall it being argued at the hearing.

Schedule – Functions and Services – para 28A

This amendment is agreed and will be included in the revised MO.

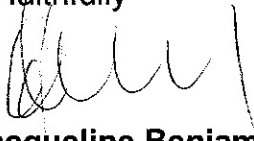
Schedule – Functions and Services – para 35

This issue does not appear to have been addressed in oral argument at the hearing and was therefore not addressed in the tribunal's decision. If either party requires us to determine the issue we will do so in our supplemental decision. Can Freeths please: (a) specify, making references to page numbers in the hearing bundles where an application for this amendment was made; and all documents relied upon in support of the amendment sought; and (b) provide any written submissions in support of the amendment requested. It should provide this written confirmation to the tribunal and the other parties by **1 March 2019**. The Manager and the s.24 leaseholders should provide any submissions in response by **15 March 2019** and the tribunal will decide the point in its supplemental decision.

Other Matters

1. Mr Bates has asked for the decision to record the names of all persons who attended the hearing. We do not consider the decision needs to identify leaseholders who attended and who played no part in the proceedings. Any member of the public is entitled to attend a tribunal hearing without the need for them to identify themselves.
2. Mr Bates has also requested that the tribunal issue a direction for Mr Coates to balance the 2015/16 accounts relatively quickly. He should clarify the statutory provision in the 1987 Act under which this direction is sought. If it is under S.24(2B)(4) this concerns the issue of directions on an application made by a *manager* subsequent to the making of a management order.

Yours faithfully



Ms Jacqueline Benjamin
Case Officer