IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

Case ref: LON/00BG/LVM/2016/0020

IN THE MATTER OF S.24 OF THE LANDLORD & TENANT ACT 1987

BETWEEN

Applicants

Octagon Overseas Ltd (1)
Canary Riverside Estate Management Ltd (2)
Palace Church 3 Ltd (3)
YFSCR Ltd (4)
Yianis Hotels Ltd (5)

-and-

Respondent

Alan Coates – Tribunal-appointed manager

Interested Persons
s.24 Applicant Leaseholders at Canary Riverside

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s.24 Applicant Leaseholders' response to submissions made by the Applicants in respect of the review of the FTT Decision dated 29 September 2017.

Preliminary

1. By paragraph 2.2 of the directions given on 6 March February 2018, the tribunal has directed the Respondents and Interested Persons to send written submissions to the tribunal.

Background

2. The leaseholders were the applicants to the successful s.24 application [LON/00BG/LAM/2015/0012], the hearing for which took place over five days in May 2016, before FTT members Ms Hamilton Farey (chair) and Mr Jarero.

3. The FTT issued its decision to appoint a manager on 5 August 2016, and an amended decision following a review[1] on 15 September 2016, together with the

[1] FTT dismissed appeals by both parties and instead reviewed its decision of 6 August 2016

Management Order. Subsequent appeals by the landlord to overturn/stay the appointment of a manager were dismissed by the FTT, Upper Tribunal and High Court.

4. The FTT decision to which the current review relates was made by Ms Hamilton Farey and Mr Jarero following an application by the landlord[2] and related companies to vary the Management Order. The matter was heard over eight days in March, April, May and June 2017. Although not represented at the hearings, leaseholders were present on all occasions.

5. Companies House records show that ultimate control and ownership of all five applicant companies resides solely with Mr Yiannikis [John] Christodoulou.

Personnel changes following the s.24 hearing

6. There have been notable changes to both the tribunal panel and the landlord's legal representatives since the original s.24 hearing took place:

    - The landlord's legal representatives for the s.24 application were Eversheds (solicitors) and Mr Mark Sefton (counsel). Neither Trowers and Hamlins (solicitors) nor Mr Justin Bates (counsel) - the legal representatives for the landlord and associated companies in respect of this matter - were involved with s.24 case management matters, nor were they present at the s.24 hearing in May 2016.

    - In January 2018 the constitution of the FTT panel was changed. It now comprises Judge Vance (chair) and Mr Jarero.

7. This is relevant to this review. For example, in their submission (dated 26 March 2018) the applicants claim:

    - "*there is no finding of fault in any of the FTT decisions about the handing of these matters by the landlord (only the quantum of fees is challenged in the s22 notice)"* [5(b)].

    - "*accordingly, there is no evidential basis upon which any properly directed FTT could have concluded that these functions should be removed*" [5(c)].

8. This is incorrect on a number of counts, e.g.:

[2] The Respondents to the s.24 application, and Applicants 1 and 2 in this matter

- The FTT concluded its decision by stating: "*Finally, the tribunal recognises that the applicants made other allegations of the respondents in this application, but is satisfied that sufficient breaches of the RICS Management Code have already been determined that it is not necessary to make reference to each and every breach relied on*." [113].

- The hearing Scott schedule included matters such as consents for alterations and the enforcement of lease covenants.

9. It is necessary to restate here some of the facts concerning the s.24 hearing and decision:

    - The s.24 hearing took place over five days in May 2016.

    - The FTT issued its 18-page determination on 5 August 2016.

    - Evidence was heard from 12 witnesses: each party was limited to five witnesses and one expert.

    - The hearing bundle included more than 4,000 pages of witness statements and exhibits, and included the Scott schedule, the management report of the nominated manager, and the draft Management Order.

    - The Scott schedule raised matters in respect of unreasonable administration charges, including consents for alterations.

    - The nominated manager's management report included a proposed schedule of charges [payable to the manager] including charges payable in respect of 'sales enquiries & administration' and 'legal & administration services'.

    - Under cross-examination the landlord's principal witness, Louise Berwin, simply refused to continue being cross-examined. Her witness statement was the only one [of the landlord's witnesses] that addressed the matters detailed in the Scott schedule. The leaseholders and their counsel were put in a difficult position, with the prospect of the hearing being adjourned to a later date in order for Ms Berwin to continue being cross-examined. In the interests of expediency, counsel agreed to forego the opportunity to continue questioning the witness.

    - The landlord's appeals against the FTT's decision to appoint a manager were ended by Mr Justice Lavender's decision in the High Court on 6 February 2017:

> "*The First Tier Tribunal's findings amply justified the making of an immediate management order"*

10. The review decision of Judge McGrath is relevant. It confirms the intent of the s.24 Decision that the receiver/manager should step into the landlord's shoes.

11. At the date of the hearing the Santander loan agreement had been in place for over a year, yet the issue of a breach of covenant and CREM being in default should the tribunal appoint a manager under s.24 was not mentioned by CREM in evidence nor by any of its witnesses.

12. CREM's position – which is disputed by the leaseholders - appears to be that unless explicitly referred to in the Management Order and/or decision, management responsibility in respect of the powers and rights detailed in the leases are not covered by the Order. Santander's position appears to be that the covenants in their loan should take primacy over the FTT's authority to appoint a manager/receiver.

Ground 1: Dealing with assignments and applications for consent under the lease

Management functions and the Management Order

13. In their submission the applicants contend "*the original FTT decision and management order did not empower the manager to play any role in the sale of flats or similar…nor was he given any functions in respect of applications for consent under the lease*".

14. This is incorrect. The s.24 applicant leaseholders sought – and were granted – an Order that placed all of the rights and powers contained in the (residential) leases with the s.24 manager.

15. The leaseholders were responsible for producing the draft Management Order that formed part of the s.24 bundle. Their starting point was that the making of an Order to appoint a manager under s.24 would place responsibility for all management matters pertaining to the Lease (previously the responsibility of the landlord) with the manager.

16. To this end, the Management Order has always stated that the manager:

> "*is given for the duration of his/her appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of the Landlord under the Leases*"… "*no other party shall be entitled to exercise a management function in*

respect of the Premises where the same is the responsibility of the Manager under this Order".

17. The applicants also contend that "*a landlord who is to lose management functions at its building is entitled to know which functions are lost and why. If that cannot be done, then the landlord must be entitled to continue to exercise its rights, duties and functions under the leases*".

18. The applicants appear to be claiming a tribunal can only remove individual rights, duties and functions from the landlord if there is 'evidential basis' to conclude that that specific right/duty/function should be removed.

19. This is not consistent with the burden of proof on leaseholders when making an application to appoint a manager.

20. A tribunal may make an order if it is 'satisfied that it is just and convenient to make the order in all the circumstances of the case' and that:

    - it finds [a landlord] in breach of any obligation…relating to the management of the premises [2(a)(i)]; **or**

    - it is satisfied that unreasonable service charges have been or are likely to made [2(ab)(i)]; **or**

    - it is satisfied that unreasonable variable administration charges have been made [2(aba)(i)]; **or**

    - it is satisfied [a landlord] has failed to comply with any relevant provision of a code of practice approved. [2(ac)(i))

21. Findings in respect of any one (or combination) of the above four grounds are sufficient for the tribunal to determine a manager should be appointed.

22. As the decision in *Maunder Taylor v Blaquiere* [2003] 1 EGLR 52 states in respect of s.24:

    "39. …*Subsection (2) restricts the ability of the tribunal to make orders. But subsection (2)(b) is of great width, in that it enables the tribunal to appoint a manager when satisfied that circumstances exist to make it 'just and convenient to do so. That also suggests the tribunal is concerned to provide a scheme of management, not just a manager of the landlord's obligations*".

> "38. …*There is no limitation as to the management functions of the manager; in particular, the functions are not limited to carrying out the terms of the leases*".

The context of the Order and its purpose

23. It cannot be the intention of the Act that an Order impose on the Premises a complex and fractured management structure, which would be the inevitable consequence of the applicants' interpretation. The manager is not merely a replacement for the managing agent. The manager assumes the management responsibility of the premises per the leases, is accountable solely to the tribunal, and is independent of the Landlord and Tenants.

24. We would refer the tribunal to *Eaglesham Properties Ltd v the Leaseholders of Flats 2, 3, 6 7, 8 and 12 Drysdale Dwellings [2015] UKUT 22 (LC)*[3] concerning the FTT's jurisdiction to determine the proper construction of orders appointing managers:

> "57. *Paragraph 5 requires the Manager to carry out the management obligations of the Property 'in accordance with the provisions of the Leases' which is wide enough to embrace payment of service charges pursuant to clause 5(2). It is true that paragraphs 5g. and 5f. make specific provision for the Manager to observe the appellant's covenants with regard to insurance, repairs, services and alterations and to enforce the lessee's covenants but do not mention enforcement of the appellant's covenant in clause 5(2). However, the obligation to manage in accordance with the provisions of the leases has to be read in the context of the order as a whole and its purpose*".
>
> "59. …*the intention of the LVT was plainly to ensure that the Property was properly managed and that the management order was effective to achieve that. Mr Sissons frankly accepted that, on his client's approach to construction of the management orders, management of the Property would be impossible. It is therefore to be expected that the LVT would make a management order the terms of enabled its purpose to be achieved rather than for its purpose to be entirely thwarted and, as the LVT said, (paragraph 61), if the management orders are sensibly capable of being read in such as was as to achieve their purpose, they should be read in that way*."

[3] LRX/19/2014

25. It is not necessary that the Order set out in detail the manager's responsibilities with regard to every single provision of the lease. The intention of the FTT is that the Order facilitates the proper management of the estate. The leaseholders contend that paragraphs 5 and 6 of the Order are sufficient to achieve this.

Functions that can be conferred on a manager

26. The applicants claim that "*it is impossible, as a matter of law, to confer functions in relation to consents on a s.24 manager", because the manager "has no proprietary interest in the property*".

27. This is incorrect. There are established legal precedents where these functions have been conferred on a s.24 manager[4], including the enforcement of lessees' covenants.

28. There is no definition or exhaustive list of 'management functions' in the lease nor in s.24 of the Act. It would of course be impossible to define: leases contain a mix of specific and general provisions, covenants and duties, spread throughout the document. The possibility of unforeseen 'management' issues arising will always exist.

29. It is for this reason that the starting point of the scope of the s.24 Order is that all management responsibilities per the lease are included - ranging from the collection of service charges and ensuring a leaseholder's debts are paid prior to a lease being reassigned, through to granting consents to alter and dealing with breaches of covenant such as 'Airbnb' lets or unauthorised pets. It is for excluded items to be specified as exceptions in the Order - e.g., in respect of forfeiture or the placing of buildings insurance.

30. An appointment under s.24 is intended to provide a remedy to leaseholders for the significant management failings by a landlord. It should not penalise those same leaseholders by imposing on them fragmented management structures that cause confusion, uncertainty, delays and additional costs, nor require them to seek their own legal counsel in order to determine who has what responsibilities per the Management Order as and when a query arises.

31. We draw the tribunal's attention to s.96 and s.98 of the Commonhold and Leasehold Reform Act 2002 which provides a definition of management functions under leases and clarifies responsibility for the granting of approvals:

[4] E.g. *Eaglesham Properties Ltd v the Leaseholders of Flats 2, 3, 6 7, 8 and 12 Drysdale Dwellings [2015] UKUT 22 (LC)*

- "96(2). *Management functions which a person who is landlord under a lease of the whole or any part of the premises under the lease are instead functions of the RTM company*.

- "96(5). '*Management functions' are functions with respect to services, repairs, maintenance, improvements, insurance and management*".

- "98(2a). *Where a person who is a landlord under a long lease of the whole or any part of the premises…has functions in relation to the grant of approvals to a tenant under the lease, the functions are instead functions of the RTM company*".

32. Under RTM, the only management functions retained by a landlord are in respect of re-entry or forfeiture. Unlike s.24, it is not a fault-based process.

33. The appointment of a manager by a tribunal under s.24 is a rigorous process. The manager and his/her plans are put under considerable scrutiny by the Tribunal. It is a fault-based remedy.

34. It should be noted that the Canary Riverside residential leases allow for someone other than the landlord to be authorised to exert the rights and powers contained within them:

> "2.6. *…a right or power granted to the Landlord may be enjoyed by the Head Landlord and by any person authorised by either the Landlord (including for the avoidance of doubt any managing agents) or the Head Landlord*".

35. In the landlord's response to the draft Management Order dated 15 January 2016[5], they stated in paragraph 9:

> "*The Residential Headlease and the flat underleases contain a detailed and comprehensive scheme for the provision of functions in connection with the management of the Canary Riverside Estate'…'the Respondents contend that any management order made by the tribunal should direct the manager to perform the management functions contained within the existing contractual structure"*.

[5] Pages 92-105, File 1 tab 2 of the s.24 hearing bundle

36. Their response did not identify any exclusions in respect of the management functions contained in the flat underleases, e.g., consents to alter.

37. It is for the tribunal, not the landlord, to determine which management functions should (or should not) be within the scope of the Management Order, and to consider the impact on the manager's ability to manage if functions are excluded. The leaseholders' application was for all management responsibilities to transfer to the tribunal-appointed manager.

38. It is a practical matter too. The manager must know at all times the details of each leaseholder to facilitate the recovery of service charges, electricity billing and debt management. Fragmentation of accountabilities, e.g., for matters such as assignmenst and consents, can only make this task more difficult for the manager and would burden the residential leaseholders with additional costs.

Santander loan

39. The applicants claim that it would be a breach of the loan with Santander were the manager to be given responsibility for assignments, consents etc., and that this would place them at risk of default.

40. CREM has a £40 million loan with Santander (dated 24 March 2015), security for which includes the head lease for Belgrave Court, Eaton House, Berkeley Tower and Hanover House – the four residential buildings, containing 280 residential apartments and the 45 Circus apartments, all held on 999-year leases and a peppercorn rent, together with associated car parking spaces.

41. Santander's interest (i.e., security) in this headlease is in the small commercial elements contained within the four residential buildings, from which the applicants derive an income stream (rent). This comprises two restaurants, a café, a dry cleaner, and a small amount of office space (currently occupied by the landlord's companies).

42. Santander was sent a copy of the s.24 application and s.22 notice, detailing the serious failures of financial and estate management alleged against CREM, in December 2015.

43. It is notable that the FTT's decision in 2016, which found the landlord to be responsible for significant and substantial breaches of the lease, legislation and RICS Code, was either not considered by Santander to be grounds for default or was not considered sufficient grounds for default. The FTT's findings against the landlord included:

- failure to repair and maintain the estate;
- a managing agent that was not sufficiently staffed or experienced;
- failure to budget with appropriate care;
- no real importance placed on accounting for the service charge.

44. It has subsequently been claimed by the applicants that the FTT's decision to appoint a manager to remedy CREM's management failings is putting them at risk of default.

Residential Leases

45. Santander's email to CREM dated 31 March 2017 stated:

- "*under no circumstances would any Borrowing, by any persons, be allowed against any Property over which Santander UK Plc have security without Santander UK Plc consent. Nor would Santander UK Plc want any restrictions registered against Property over which Santander UK Plc have security"*.
- "*Flat sales and licences to alter etc any assets or units over which Santander UK Plc has security must be dealt with the borrower/owner – we would not expect a 3rd party to be able to have such control over an asset charged to Santander UK Plc"*.

46. The 325 flats demised to the residential leaseholders do not form part of the security for the £40 million loan with CREM:

- Leaseholders, including the owners of Circus apartments, are free to take out loans/mortgages and re-mortgage without requiring the consent of Santander.
- The corresponding charge will be registered against their property.

47. It follows that flats sales and licenses to alter properties demised to residential leaseholders are not the concern of Santander. The demised residential flats are not part of the security for their loan.

48. Further, the residential leases allow the landlord to delegate rights and powers to a third party. The loan with Santander cannot and does not vary any of the lease terms.

49. The FTT is reminded that the residential underleases have a term of 999 years (i.e., there is no reversionary interest) and pay a peppercorn rent. Their combined value is a multiple of the landlord's (minority) commercial interest.

Events of Default

50. The leaseholders have had sight of the Santander loan agreement as part of the bundle for the case management conference heard on 6 March 2018.

51. Section 24 of the loan agreement details 'Events of Default'. Paragraph 24.13 refers to *Litigation:*

> '*Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced in relation to…any Obligor or its assets which has been or is reasonably likely to be adversely determined and, if adversely determined, has or is reasonably likely to have a Material Adverse Effect'*.

52. The tribunal's decision was issued in August 2016: it was, in respect of the landlord, 'adversely determined'. If Santander had decided to declare a breach they would have done it at that time. That they did not means that they do not consider it to be sufficiently material in relation to other financial covenants.

The tribunal's powers under s.24 versus the Santander loan conditions

53. The essence of the applicants' arguments in respect of their loan with Santander is that a loan agreement supersedes the powers that the 1987 Act confers upon the tribunal under section 24. If correct, this would effectively preclude a tribunal from:

- appointing a s.24 manager without the landlord's lender's consent;

- empowering a s.24 manager to grant consents to alter, deal with breaches of lease covenants or ensure service charge debts were cleared prior to reassigning a lease.

54. In fact, all a landlord need do to prevent a tribunal from making a s.24 Order against it (or grant leaseholders the Right to Manage) is to take out a loan. The Santander loan document is a standard instrument.

55. If the landlord considered there was a risk of default, then they should have managed the estate so that there would never be grounds for a breach of the relevant covenants. The covenant is designed to ensure that the assets are properly managed. If they aren't, then there is a breach.

56. The landlord did not mention the risk of default in their evidence to the FTT nor did any of their witnesses raise the subject when examined.

57. It is Santander's decision whether to declare a breach and require the repayment of the loan. This is not a matter for the FTT.

58. If the interest of Santander over the minority commercial interest and Palace Hotels, is prioritised over the much more valuable residential interests this would be a case of the tail wagging the dog. Residents are responsible for c.70% of all service charge costs, and the insurance valuation of the Premises is also split approximately 70% residential 30% commercial.

Clarification by the tribunal

59. On the eighth and final day of the application to vary hearing, the s.24 applicant leaseholders submitted to the FTT a written closing statement. Although not represented at the hearing, leaseholders were interested parties, and present on all occasions. It had become clear that some matters addressed in evidence at the s.24 hearing had effectively been re-heard at the variation hearing, and other matters heard (but not detailed in the written s.24 decision) were being deemed (by the landlord) as never having been raised.

60. In the concluding paragraphs the leaseholders asked that the FTT confirm, for the avoidance of doubt, that Mr Coates was responsible for consents for alterations, lease assignments, sellers packs etc. – which had always been their interpretation of the Order.

61. The new Management Order and accompanying decision of 29 September 2017 failed to provide that clarification. The s.24 leaseholders (not '*the leaseholder association*', as the applicants state) wrote to the FTT on 11 October 2016 requesting clarification. The FTT's response, in their letter of 13 October 2016, stated:

> "*In the tribunal's view Paragraphs 5 and 6 of the Order confirm that the manager is entitled to manage the development in accordance with the relevant leases and this would include the grant or refusal of permissions and the production of sales packs in relation to the residential units, and these matters were not reserved to the landlord*".

62. The decision of Judge McGrath dated 12 January 2018 states:

> "*It is acknowledged that the clarification given indicates the Tribunal's view but it is not determinative*".

63. Paragraphs 5 and 6 of the Order have been present in every version of the Order. The leaseholders (and the manager) have from the outset considered this wording to reflect the fact that all management responsibilities conferred on the landlord in the lease would, under the Order, be conferred on the manager. This is a reasonable person's interpretation, and consistent with the removal of responsibilities from a landlord under RTM legislation.

64. The only responsibility identified in the tribunal's decision of 29 September 2017 that is reserved to the landlord is insurance. That decision also confirms that the manager "*must be entitled to manage the whole estate*".

Ground 2: Duration of appointment

65. We note that Judge McGrath considers that there may have been a breach of natural justice in extending the term of the Management Order.

66. The Act states:

> "25(5)(d). [an order under this section may provide] for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time".

67. The Act gives the tribunal the power to use its own discretion to set the term of the Order.

68. The applicants applied to the tribunal to consider the length of the Order and asked that the term be shortened to two years minus one day. The tribunal used its power under the Act to make a new Order for a term of three years. It was at liberty to do so.

69. The applicants' application was made to prevent the leaseholders finding themselves in a position to satisfy condition s.29(3) of the Act in respect of an acquisition order. The landlord could have eliminated this risk by avoiding the breaches and other management failings that led to the appointment of the s.24 manager.

Ground 3: Indemnities

70. The leaseholders make no comment.

Ground 4: Omissions

71. The leaseholders refer the tribunal to its submission dated 14 February 2018, made per direction 3 of the directions dated 8 January 2018.

72. The leaseholders would add, in respect of the applicants' costs of complying with the Order, that for the tribunal to agree to this would have the effect of making all leaseholders responsible for costs incurred by the landlord as a direct result of the tribunal's decision to appoint a manager.

73. The leaseholders have no recourse to recover their own (considerable) costs incurred when bringing their s.24 application. The tribunal has already found in favour of the leaseholders in respect of their s.20C application – albeit leaseholders not party to the s.24 application have been required to pay the landlord's legal expenses.

74. It would be a breach of natural justice to require the leaseholders to reimburse the landlord for costs of complying with the Order which arise solely as a consequence of the landlord's management failure.

Statement of Truth

I believe that the facts contained in this document are true. I am duly authorised to sign this statement on behalf of the Interested Parties known as the s.24 applicant leaseholders.

Signed:

Name:

Position:

Date:

UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2015] UKUT 0022(LC)
LT Case Number: LRX/19/2014

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – appointment of manager – proper construction of order appointing the manager – whether First Tier Tribunal had jurisdiction to interpret the order – whether manager entitled to recover service charges from the lessor in respect of flats not let on long leases – First Tier Tribunal correctly held the manager was entitled to recovery service charges from the lessor pursuant to the order appointing him

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

BETWEEN:

EAGLESHAM PROPERTIES LIMITED	**Appellant**
and	
LEASEHOLDERS OF FLATS 2, 3, 6, 7, 8 AND 12 DRYSDALE DWELLINGS	**Respondents**

Re: Drysdale Dwellings,
Dunn Street,
Hackney,
London E8 2DH

Before Her Honour Judge Alice Robinson

Sitting at: Royal Courts of Justice, Strand, London WC2A 2LL
on
8 January 2015

Philip Sissons instructed by Scott Cohen Solicitors for the Appellants
John Jeffrey in person for the Respondents

The following cases are referred to in this decision:

Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 All ER 98, HL
Maunder Taylor v Blaquiere [2002] EWCA Civ 1633
Cawsand Fort Management Co Ltd v Stafford [2007] EWCA Civ 1187

The following further cases were cited in argument:

EF Phillips & Sons Ltd v Clarke [1970] 1 Ch 322

DECISION

Introduction

1. This is an appeal against a decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel ("LVT"), now the First Tier Tribunal Property Chamber (Residential Property) ("FTT") dated 4 June 2013. Permission to appeal was granted by the FTT on 4 September 2013.

2. I will return to the grounds of appeal in more detail but in summary the appeal raises two issues

(1) whether the LVT had jurisdiction to determine the proper construction of orders appointing a manager and, if so

(2) whether, properly construed, the orders permitted the manager to recover monies equivalent to service charges from the freehold owner of flats not let on long leases.

The Background

3. Eaglesham Properties Limited ("the appellant") is the freehold owner of a block of 12 flats known as Drysdale Dwellings, Dunn Street, Hackney, London E8 2DH ("the Property"). Seven of the flats are let on long leases and five are retained by the appellant for letting on short term tenancies. I shall refer to the latter as the appellant's flats. The respondents are the long lessees of 6 flats in the Property (flats 2, 3, 6, 7, 8 and 12).

4. For a number of years the respondents have been unhappy with the appellant's management of the Property as a result of which they have made several applications for the appointment of a manager pursuant to s.24 of the Landlord and Tenant Act 1987 ("the 1987 Act"). On 24 June 2009 John Mortimer Property Management Limited ("the Manager") was appointed manager and receiver of the Property for an interim period of 12 months. After expiry of that appointment, on 17 January 2011 the LVT purported to extend the appointment of the Manager until 24 June 2011. That extension was later overturned by the Tribunal on the grounds that, once the interim order had lapsed, there was no jurisdiction to extend the order. In the meantime the respondents had made a further free standing application for appointment of a manager as a result of which on 16 June 2011 the Manager was again appointed until 24 June 2012 or 28 days after determination of the appeal against the January 2011 management order.

5. On 8 February 2012 the Manager began proceedings in the county court against the appellant for recovery of 'arrears of service charge' and costs relating to the appellant's flats. The appellant denied that it had any obligation to pay such service charges and on 4 January 2013 the Manager's claim was stayed by the county court pending further directions and/or clarification by the LVT in relation to its order and the powers granted to the Manager.

6. In its decision dated 4 June 2013 the subject of this appeal the LVT had two sets of proceedings before it. First, an application by the Manager for rulings and further directions as to his powers under the June 2011 management order (LON/00AM/LVM/2011/0003) ("the Manager's application"). Second, a further application by the respondents for the appointment of a manager and an application by them pursuant to s.27A of the 1987 Act for a determination as to the reasonableness of service charges levied by the appellant (LON/00AM/LAM/2013/0012) ("the lessee's applications").

7. The LVT dismissed the Manager's application on the grounds that it did not have jurisdiction to determine the issues raised by it as to the ambit of the Manager's powers. Applications for permission to appeal by the appellant against that aspect of the decision were refused by the FTT on 15 July 2013 and the Tribunal on 22 January 2014.

8. However, in the lessee's applications, the LVT determined the issue raised as to the ambit of the Manager's powers, in effect by way of preliminary issue. Having done so, the FTT went on to decide the substantive issues raised by those applications in a later decision dated 4 October 2013. In the meantime, on 4 September 2013 the FTT granted permission to appeal against its decision on the ambit of the Manager's powers, stating

> "…the tribunal's conclusions on the proper construction of the management orders raise questions of law in respect of which the applicant's point of view is perfectly arguable."

On 22 January 2014 the Tribunal extended the time for serving notice of appeal.

The Lease

9. The Tribunal was informed that the long leases of the 7 flats in the Property are in similar form and that dated 6 October 1988 relating to flat 2 was relied upon. The Particulars set out the parties, premises, premium, rent, the term of 99 years and the 'Tenant's share of total expenditure' as 'One-twelfth'.

10. Clause 3 contains Tenant's covenants with the Lessors alone. Clause 4 provides:

> "4. THE Tenant HEREBY COVENANTS with the Lessors and with and for the benefit of the Flat Owners that throughout the term the Tenant will:-
> …
> (4) Pay the Interim Charge and the Service Charge at the times and in the manner provided in the Fifth Schedule hereto both such Charges to be recoverable in default as rent in arrear."
>
> The Flat Owners are defined in clause 1 as "the tenants and their successors in title of the other flats or maisonettes comprised in the Building who may from time to time hold the same upon terms substantially similar to those herein contained (save as to the matters set out in the Particulars)."

11. Clause 5 contains the Lessors' covenants with the Tenant including:

> "(2) That every lease or tenancy agreement of a flat or maisonette in the Building already granted or to be granted by the Lessors shall contain regulations and covenants to be observed by the Tenant thereof in similar terms to those contained in this Lease and during any period or periods during which no such lease or tenancy agreement subsists to comply themselves with the said regulations and covenants."

Clause 5(5) contains covenants to repair and maintain, insure and other covenants relating to management of the Property. Clause 5(5)(l) contains a covenant to set aside a sinking fund to be held on trust to pay for future expenditure on repairs, maintenance and renewals.

12. The Fifth Schedule sets out detailed provision for payment of the Interim Charge and Service Charge to meet Total Expenditure incurred in carrying out the obligations in clause 5(5) of the lease. The Service Charge means the percentage of Total Expenditure specified in the Particulars, paragraph 1(2). Provision is made for service by the Lessors of a Certificate of Total Expenditure, the Interim Charge and Service Charge with any excess to be credited to the Tenant's account and any shortfall to be paid within 28 days.

The Law

13. Section 21 of the 1987 Act gives a tenant the right to apply for the appointment of a manager subject to the requirements of that section. Provision is made for the service of notice on the landlord and then application to the FTT whose powers are set out in s.24 (so far as relevant):

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

(ab) where the tribunal is satisfied—

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

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

(aba) where the tribunal is satisfied—

(i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and

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

(abb) where the tribunal is satisfied—

(i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act,"

Interposing, this is a requirement for service charges to be held on trust in a designated account

"and

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

(ac) where the tribunal is satisfied—

(i) that any relevant person has failed to comply with any relevant provision of a [code of management practice], and

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

or

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

(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…

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

14. The Landlord and Tenant Act 1985 ("the 1985 Act") restricts the right to recover service charges to those which are reasonable which means:

"(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;" s.19(1)

15. Provision is made in s.27A of the 1985 Act for applications to the FTT to determine the issue of reasonableness:

"(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable."

The LVT decision

16. The LVT dealt first with the appellant's argument that it did not have jurisdiction to issue any further directions or express any view on the effect of previous orders appointing a manager after

they have expired. The LVT considered that s.24(4) of the 1987 Act is wide enough to permit an application by a manager to be made after the expiry of his appointment and that this was consistent with the relationship between the manager and the Tribunal described in *Maunder Taylor v Blaquiere* [2002] EWCA Civ 1633 at paragraph 41. The LVT concluded:

> "30. In our judgment it is unnecessary, and would be anomalous, for the Tribunal to turn its back on a manager whom it has appointed and who seeks its assistance in understanding the scope and consequences of his appointment or in dealing with a situation which has arisen out of his appointment after it has come to an end. There is nothing in the language or purpose of Part II of the 1987 Act which requires or entitles the Tribunal to treat the expiry of the appointment as a guillotine terminating the relationship for all purposes."

17. The LVT continued that it was not prevented from reaching that view by virtue of the Tribunal's decision overturning the January 2011 order appointing a manager. The decision then states:

> "33. The questions on which the Manager (and the county court) seeks the assistance of the Tribunal concern the proper interpretation of the Tribunal's orders and the validity of the steps taken by him pursuant, as he understood it, to those orders. It would, in our view, be perfectly legitimate for a manager to seek assistance of that sort during the period of his appointment, and Mr Sandham did not argue otherwise. Once a Manager's appointment has been completed the position may be different, depending on the purpose for which the assistance of the Tribunal is sought.
>
> 34.Where there is a live issue before the Tribunal which raises a question of construction of an earlier order, it is clearly within the power of the Tribunal to interpret its earlier order as a step to determining that issue. One example might be where a challenge is made under section 27A of the 1985 Act to the recovery through the service charges of costs incurred by a manager. Where the manager's appointment had lapsed by the time the challenge is made, and where the challenge raises issues of the scope of the manager's powers to incur the disputed costs, it would obviously be necessary for the Tribunal to rule on the extent of those powers; the fact that the appointment itself had lapsed would not be an obstacle to that exercise.
>
> 35.Where there is no live question before the Tribunal which depends on the interpretation of its earlier orders, we agree with Mr Sandham that the Tribunal has no jurisdiction to interpret those orders. The Tribunal's job is done. In particular the Tribunal cannot act as a consultant or sub-contractor to another judicial decision maker. If an issue arises before another court which turns on the interpretation of the order, the task of interpretation should be undertaken by the court in which the issue arises and not by this Tribunal. An expression of opinion by this Tribunal would not be determinative, and it might be thought that in those circumstances, the opinion would best be left unexpressed.
>
> 36. The situation in which the Tribunal finds itself is not so neatly divided. The scope of the earlier orders is a live issue with potentially significant consequences in the leaseholder's applications. In the Manager's own application the same issue is free standing; it comes before us because of a request by the county court for clarification in the context of proceedings in which this Tribunal has no judicial function. If the Manager's own application stood alone, it

would be difficult for this Tribunal to express any view, despite the request of the county court. We could be accused of usurping the functions of the county court in the case before it.

37. Fortuitously, as we see it, the same issue arises in all three applications. There is no reason why, having heard all of the argument, we should not make a decision on the issue of interpretation in the context of the leaseholder's applications. The Manager is not a party to those applications, so no question of issue estoppel or *res judicata* would arise between the Manager and Eaglesham. It will remain open to the county court to from its own view in the proceedings before it, giving such weight as it thinks appropriate to the conclusions this Tribunal has expressed on the same issue.

38. For these reasons we determine that the Tribunal does have jurisdiction to consider the Manager's application for clarification of the previous orders, albeit only in the leaseholders' applications and not in the Manager's. We reach that conclusion with some relief, the Tribunal and the parties having expended significant time and resources in arguing the substantive issue before us. Both Mr Mortimer and Mr Jeffrey were understandably baffled by the jurisdictional arguments into which the hearing descended. It would be no service to them, or to Eaglesham, for this Tribunal to require that they go through the same experience for a second time."

18. The LVT went on to refer to the terms of the leases and in paragraphs 45 to 52 held that, as between the appellant and the lessees, clause 5(2) required the appellant to hand over money representing its contribution towards the Interim Charge and Services charge in respect of the appellant's flats. It concluded:

"52. The effect of clause 5(2) of the Lease is therefore to make Eaglesham liable to contribute for each of its flats on the same basis in every respect as if it was a leaseholder subject to the same terms as the other leaseholders…."

19. It should be noted that there is no appeal against this aspect of the LVT decision and it was confirmed on behalf of the appellant at the hearing before me that the LVT's decision in paragraphs 45 to 52 is accepted by the appellant.

20. The LVT then turned to the key issue as to the proper interpretation of the management orders. After referring to the terms of the orders and the parties submissions, the decision sets out the LVTs reasoning in the following paragraphs:

"60. We approach the question of the effect of the management orders as a question of construction or interpretation. Our task is to explain what the orders means, and not to supplement or improve them.

61. We begin by making the assumption that the management orders were intended to be effective, and were intended to confer on the Manager's sufficient powers to enable him to discharge the responsibilities which the Tribunal placed on him. It is of course possible that the orders were defective, as Mr Sandham submits, but if they are capable of a sensible reading which avoids the effect which Eaglesham invites us to give on them, we ought, we believe, to read them in that way.

62. We are satisfied that the natural and proper reading of each of the management orders permits the Manager to enforce Eaglesham's obligations to contribute to the service charge as if it were the lessee of each of its in-hand flats. We reach that conclusion by two alternative routes.

63. First, we are satisfied that the over arching direction to the Manager in paragraph 5 of the 2009 order is sufficient to confer on him all of the powers he requires. That direction is that the Manager must "*carry out the management obligations of Drysdale Dwellings in accordance with the provisions of the Leases and in particular and without prejudice to the generality of the foregoing:...*[There is then set out a list of specific duties and powers including to observe Eaglesham's covenants and to enforce the covenants of the lessees]. When the leases were drafted no provision was made for a manager, so the reference to "management obligations" being carried out "in accordance with the provisions of the Leases" is clearly intended to confer on the Manager a general responsibility to ensure that the Building is run in the manner contemplated by the leases. A necessary corollary of that general responsibility is the power to ensure that all parties comply with their obligations under the leases including, in the case of Eaglesham, its obligation to contribute five twelfths of the cost of providing the services.

64. A similar over arching direction, with the same consequence, can be found in paragraph 3 of the order of 17 January 2011 where the Manager is tasked with managing the property in accordance with "the respective obligations of the landlord." Those obligations include the obligation to contribute five twelfths of the cost of services.

65. Alternatively, we consider that it is both legitimate and necessary to construe the management orders in the light of clause 5(2) of the leases. Whenever a flat is not subject to a lease imposing the standard regulations and covenants clause 5(2) imposes an obligation on Eaglesham "*to comply themselves with the same regulations and covenants"* Thus the leases treat Eaglesham as if it were the lessee of the un-leased flats, and the management orders ought to be construed in the same way. Where the orders refer to the obligation of the lessees they are to be construed, so far as is necessary to give effect to the purpose of the orders, as including the obligations of Eaglesham as deemed lessee of the flats it has chosen not to lease on the standard terms. Thus the instruction to the Manager in paragraph 3 of the 2009 order to collect all the various funds reserved and made payable by the Lessees in the respective Leases of the flats in the property, includes those sums which the clause 5(2) of the leases make payable by Eaglesham as if it were the lessee of the un-leased flats. Similarly the obligation imposed on the Manager by paragraph 5.h of the 2009 order to "enforce the Lessee's covenants" empowers the Manager to enforce the covenant given by Eaglesham that it will comply with the standard lessee's covenants in relation to the un-leased flats.

66. The same approach is appropriate when construing the January 2011 order. In particular, paragraph 2 of the Directions, which requires the Manager to *"collect all the various funds reserved and payable by the Lessees… in the respective leases … of the flats*" includes all of the sums which clause 5(2) makes payable by Eaglesham in its capacity as deemed lessee of the un-leased flats. Similarly, the power in paragraph ii of the service charge section of the Schedule of Functions and Services, to demand and collect service charges and other payment due from the lessees, includes sums due from Eaglesham in its capacity as deemed lessee of the five flats which it chooses not to lease.

Conclusion

67. We are therefore satisfied that the Manager was not only entitled, but was obliged by the orders of the Tribunal, to demand Eaglesham's service charge contributions for its five flats and, when Eaglesham refused to pay, to instruct solicitors and commence proceedings for their recovery. That claim was properly expressed as one which arose under the Tribunal's orders and by reference to the terms of the leases, in particular clause 5(2). The Manager's appointment terminated on 24 June 2012, at which point he ceased to have any role in the management of Drysdale Dwellings. It was therefore open to him to discontinue the proceedings and to leave the leaseholders to enforce the obligations of Eaglesham, as they have now done by commencing their own applications in this Tribunal, putting the extent of those obligations in issue."

The appeal

21. The appellant's Statement of Case which was served with the Notice of Appeal contained five grounds of appeal. However, Mr Sissons, who appeared on behalf of the appellant, agreed that the grounds effectively raised two issues. First, whether the LVT had jurisdiction to determine the issue as to the proper construction of the management orders at the hearing which took place on 22 May 2013 that led to the decision dated 4 June 2013 the subject of this appeal ("the jurisdiction issue"). Second, whether the terms of the management orders entitled the Manager to recover from the appellant sums by way of contribution to the costs incurred in managing the Property i.e. the service charges which the appellant would otherwise be liable to the lessees to pay pursuant to clause 5(2) of the lease in respect of the appellant's flats ("the construction issue").

22. Mr Sissons submitted that it had been procedurally premature and unfair for the LVT to decide the construction issue when it did and that as a matter of law it did not have jurisdiction to do so at that stage of the proceedings.

23. There is no dispute that the Manager's application was made on 26 February 2013 and was to be finally determined following the hearing on 22 May 2013. The lessees' applications were made on 30 April 2013 and it had not been anticipated, at least before the hearing on 22 May 2013, that the LVT would do more than issue directions at that hearing in respect of the lessees' applications.

24. Having decided that it did not have jurisdiction to determine the construction issue in the Manager's application, Mr Sissons submitted that the LVT should not have gone on to finally decide that issue in the lessees' applications instead of merely giving directions. He submitted that the appellant had not had an opportunity to make submissions or prepare a statement of case in the lessees' applications addressing the relevance of the construction issue to those applications as opposed to its relevance to the Manager's application which was fully argued. The LVT should, as a matter of basic procedural fairness, have declined to deal with that question before the appellant had had a proper opportunity to state its case as to the relevance of that issue to the lessees' applications. Had it been given the opportunity to do so, the appellant would have submitted that the issue of the construction of the management orders was of no relevance to the lessees' applications and that therefore the LVT had no jurisdiction to determine the point in relation to those applications.

25. If the LVT was entitled to determine the construction issue in the lessees' applications, it reached the wrong answer. The Manager is a court appointed officer whose rights and obligations derive wholly from the order, not the leases of the 7 flats in the Property, see *Maunder Taylor v Blaquiere* at paragraphs 41 to 43. Therefore the manager's powers must be set out clearly. The management orders fall to be construed objectively and it is not a legitimate part of the process of construction to improve upon the order or to correct deficiencies which must be the subject of an application for a variation, see *Cawsand Fort Management Co Ltd v Stafford* [2007] EWCA Civ 1187 at paragraph 35.

26. Mr Sissons submitted that although the June 2011 management order incorporates by reference the terms of the two previous management orders, neither of them contained any provision conferring an entitlement on the Manager to demand money from the appellant. The obligation to manage the Property cannot be construed so as to entitle the Manager to enforce a contractual obligation owed by the appellant to the lessees. Any right given to the Manager to enforce the lessees' covenants cannot apply to enforcement of clause 5(2) because the appellant is not and never has been a lessee of the Property.

27. The LVT simply overlooked the need for the management orders to give the Manager a power to enforce clause 5(2) of the leases and it was not open to the LVT to correct that error by a process of construction.

28. Mr Jeffrey supported the LVT decision and said it should be upheld for the reasons given in the decision. In practice all the necessary information for the LVT to take a decision was available and the applicant was aware of the lessees application and grounds for them.

29. The intention of the management orders was for the Manager to manage the Property and rectify the breaches caused by the appellant's neglect. No sensible person could think that the orders would enable the appellant not to contribute its share of the service charges for the appellant's flats. If the appellant's construction was correct, the Manager would be unable to function as a manager.

30. Further, by the time the January 2011 management order was made, the appellant was refusing to pay its share of the service charges to the Manager which was one of the grounds on which the order was made. He also asserted that at the hearing which led to that order being made the appellant's representative cited the wording of the June 2009 management order as the reason for non-payment. Accordingly the LVT was well aware of those issues and must have believed that the wording of the management order was sufficient to allow the Manager to recover the appellant's service charge contributions.

31. Mr Jeffrey believed that this was yet another attempt by the appellant to evade its responsibilities under the leases towards management of the Property. Despite the fact that the appellant asserted the January 2011 management order was invalid, it did not pay its service charge contribution to its own agents during this period. In fact, it did not pay its outstanding contributions until shortly before the substantive hearing of the lessees' application for the further appointment of a manager in September 2013.

Decision – the jurisdiction issue

32. The appellant's arguments on this issue are twofold. First, it is said that the appellant's did not have notice before the hearing on 22 May 2013 that the LVT was going to determine the construction issue in the lessees' applications at that stage. Therefore to do so was unfair because it prevented the appellant from putting forward its case. Second, if the appellant had been given notice that the LVT were considering the construction issue in the lessee's applications, it would have submitted that the LVT had no jurisdiction to do so.

33. The sequence of events which led up to the LVT hearing of the lessees' applications on 22 May 2013 and its decision to decide the jurisdiction issue on those applications is set out in paragraphs 16 to 20 of the decision:

> "16. Shortly before the hearing of the Manager's application, on 30 April 2013, Mr Jeffery and the leaseholders issued their applications for the appointment of a new manager under section 24 of the Landlord and Tenant Act 1987, and for determinations relating to service charges under section 27A of the Landlord and Tenant Act 1987.
>
> 17. The Tribunal informed the parties on 19 April (at a time when the further applications by Mr Jeffery and the other leaseholders had been intimated but not issued) that those applications would be considered at the hearing before us, but that we were likely to be able to deal with them substantively. When the hearing commenced we stated that our consideration of the further applications would be likely to be limited to giving directions.
>
> 18. In the event the scope of the further applications was considered in some detail in the course of the hearing. As a result of the submissions made by the parties, and on reflection, it became apparent to the Tribunal that there was some significant overlap between the questions raised in the original application brought by the Manager and the issues raised in the latest applications. In particular, it is part of the leaseholders' case under section 24 that Eaglesham has not paid its contributions to the service charge account between June 2009 and June 2012 (the period of the Manager's involvement) and that that failure was a breach of Eaglesham's obligations under their leases and therefore a ground for the appointment of a manager. Eaglesham also indicated that it would challenge some of the professional fees included in the service charge, since these related to the costs of the legal proceedings brought by the manager in the County Court which, it is said, the Manager had no power to bring.
>
> 19. The basic question before the Tribunal concerns the scope of the Manager's powers and duties under its earlier orders. Was it open to the Manager to require Eaglesham to make a contribution to the service charge, and to commence proceedings when it refused to do so? That basic question arises in all three applications before us: the Manager's application for directions, and the leaseholder's applications for the appointment of another manager under section 24 and for the determination of service charge issues under section 27A.
>
> 20. The most fundamental submission of Mr Sandham was that the Tribunal did not have jurisdiction to issue any further directions to the Manager or to express any view on the effect of its previous orders. Those orders, he submitted, meant what they meant, and could not be varied or supplemented by this Tribunal. Mr Sandham agreed that it was open to the Tribunal,

in appropriate circumstances, to *explain* what the orders meant, but where a question of interpretation arose in proceedings in the county court it was for the county court to undertake that exercise; any view expressed by this Tribunal would not be binding in the county court and so, he suggested, no view should be expressed. Having heard full argument on the scope of the Tribunal's previous orders, which is very much in dispute between the parties, and having been specifically invited by the county court to clarify the effect of those orders, the Tribunal was reluctant to send the parties away empty handed and to leave them to repeat the same arguments once more in the county court."

34. Thus the lessee's applications had been issued only a short while before the hearing and there is no dispute that no statements of case had been served. At the start of the hearing both parties anticipated that the only steps which would be taken by the LVT at that stage of the lessees' applications would be the giving of directions. Therefore it does appear that the appellant may have been taken by surprise by the LVT deciding the construction issue in the lessees' applications in its decision dated 4 June 2013. There is no evidence as to whether the LVT members told the parties at the hearing that they proposed to take this course and for present purposes I assume that they did not.

35. However, whether the LVT's decision was unfair for this reason depends on whether the appellant was in fact prejudiced by not being able to rely on further representations or evidence at that stage. The appellant was well aware that the LVT would decide the construction issue in the Manager's application if it rejected the argument that it had no jurisdiction to do so. The appellant was able to and did make any submissions it wished to about the construction issue. Mr Sissons submits that was insufficient because the appellant was deprived of the opportunity to argue that the LVT had no jurisdiction to determine the construction issue in the lessees' applications.

36. It could be said that whether the LVT had jurisdiction to determine the construction issue in the lessee's applications was and is a question of law. Therefore the appellant has now had all the opportunity it requires to put its case on this issue to the Tribunal which thus cures any unfairness (subject to the question of costs). Mr Sissons submitted this was not correct because the LVT and now the Tribunal did not have the benefit of all of the factual information that would be necessary to decide whether there was jurisdiction to determine the construction issue in the lessee's applications.

37. He submitted that whether the ambit of the Manager's powers was relevant to the lessees' applications could only be determined by going into all of the facts of the lessees' application and in particular whether it was just and convenient to make an order appointing a manager. Put another way, the LVT had no jurisdiction to decide the construction issue unless and until it was necessary to do so as part of the ratio of its' substantive decision on the lessees' applications. He pointed to the fact that in its substantive decision dated 4 October 2013 on the lessees' applications the LVT did not mention the management orders at all. Further, he submitted that the ambit of the Manager's powers could not in any event be relevant to the lessees' application to determine the reasonableness of service charges.

38. In my view this is to take an unduly narrow view of the powers of the LVT (and now FTT). There is no doubt that a main ground of the lessees' application to appoint a manager was that the appellant had failed to pay its share of the service charges at any stage, including during the currency of the management orders. The appellant asserted that it was under no obligation to pay the Manager and Mr Sissons submitted that such non-payment could not be a breach of "any obligation owed by [the appellant] to the tenant under his tenancy" for the purposes of s.24(2)(a)(i) of the 1987 Act because it was not an obligation owed to the lessees. However, it is clear that s.24(2)(b) gives the FTT power to appoint a manager where it is satisfied that other circumstances exist which make it just and convenient for the order to be made. In my judgment, breach of an obligation owed to a previous court appointed manager could in principle be grounds for making a further management order as such "other circumstances". Therefore, on the face of it and, as the LVT said in paragraph 18 of the decision, whether the appellant was required to pay service charges to the Manager was an issue that arose in the lessees' application to appoint a manager.

39. At the time of the LVT hearing in May 2013 the appellant's position was that it was not in breach of any obligation owed to the respondents actually to hand over any service charge monies (see paragraph 47 of the decision) nor did it owe any obligation to pay service charges to the Manager. The LVT determined both those issues against the appellant. Mr Sissons does not suggest that the LVT did not have jurisdiction to determine the former despite the fact that not all the facts were known as to whether it would be just and convenient to make the management order in the lessees' application.

40. By the time of the substantive hearing in September 2013 the appellant had paid both sets of monies. That was one of the reasons the FTT gave for concluding that it was not just and convenient for a manager to be appointed, see paragraph 35. Thus the LVT's decision dated 4 June 2013 on both those issues paved the way for the appellant's success in the 4 October 2013 decision. The LVT having found against the appellant on those preliminary issues the appellant decided to pay the outstanding sums as a result of which those breaches had been remedied. In those circumstances it was not necessary for the FTT to go into the construction issue or non payment of service charges by the appellant to the Manager in its 4 October 2013 decision. If that point had not already been decided, in all likelihood the appellant would still have been asserting it had no obligation to pay service charges to the Manager and the FTT would have had to decide the point at the substantive hearing. Therefore the LVT's decision on the construction issue was in fact relevant to the final decision whether or not to appoint a manager.

41. Further, as Mr Sissons was at pains to point out in his submissions on the construction issue, whether the appellant had an obligation to pay service charges to the Manager is a question of construction of the wording of the management order itself which forms "the *entire* basis of the manager's functions and powers" (paragraph 27 of the appellant's Skeleton Argument). This is a question of law. Mr Sissons was not able to point to any authority as to the correct approach towards construing a court order. He submitted that by analogy with the approach towards construction of a contract in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 All ER 98, HL the management orders should be given the meaning which they would convey to a reasonable person having all the background knowledge which would reasonably have been available to the LVT at the date the management order was made, per Lord Hoffman at p.114. However, at no stage did he identify any evidence as to background knowledge available to the LVT when the

management orders were made which the LVT was not aware of in June 2013 let alone any evidence that he said would have made a difference to its decision on the construction issue.

42. In my judgment, Mr Sissons submissions conflated two categories of decision which the LVT had to make in the lessees' application for a manager. First, to resolve any issues of fact or law which may have arisen and second, in the light of the resolution of those issues, to decide whether it was just and convenient to make the order which is a question of judgment. Whether the appellant was under any duty to pay service charges to the Manager and, if so, whether the service charges had been paid fall into the first category. If an LVT (or FTT) considers that it would assist it and/or the parties to determine one or more issues of fact or law by way of preliminary issue before deciding others and the second 'just and convenient' issue, that is a matter for the LVT (or FTT). The LVT had power to regulate its own procedure including to give "any direction that appears to the tribunal necessary or desirable for securing the just, expeditious and economical disposal of proceedings", rule 12(3)(a) of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (SI 2003 No.2099). The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013 No.1169) now make express provision for the FTT to order that an issue in the proceedings be dealt with as a preliminary issue, see rule 6(3)(g).

43. In my judgment the LVT was therefore right to decide that the construction issue was relevant to the lessees' application for a manager and it had jurisdiction to determine that issue in the lessees' application for a manager by way of a preliminary issue on 4 June 2013 in advance of the substantive decision on 4 October 2013.

44. I also consider that the LVT was correct to decide that the construction issue was relevant to the lessees' s.27A application to determine the reasonableness of the service charges, see the last sentence of paragraph 18. That application specifically asked the LVT to take a decision on the costs associated with the Manager's attempts to recover service charges from the appellant. In order to do so the LVT would have to decide whether they were payable and reasonable pursuant to sections 19 and 27A of the 1985 Act and it could not have done so without first deciding the construction issue. Indeed, when I asked Mr Sissons what practical purpose the appeal on the construction issue had now that the appellant had paid the service charges, he specifically mentioned those costs (see below). In the event for reasons I am unaware of, it does not appear that the FTT considered those costs in its decision dated 4 October 2013. However, that does not detract from the fact that whether those costs were payable was squarely raised on the face of the lessee's S.27A application and therefore the LVT had jurisdiction to decide the construction issue in that application.

Decision – the construction issue

45. Given that the appellant has paid into the service charge fund all the service charges due under clause 5(2) of the lease, including those which fell to be paid during the operation of the management orders, I enquired at the beginning of the hearing as to why the appeal was not academic. Mr Sissons submitted that it was relevant for two reasons. First, the Tribunal's decision would be persuasive in the county court claim by the Manager against the appellant for service charges and therefore would assist in deciding who should bear the legal costs of that action. Second, the Manager had included in

the service charges a professional management fee relating to the recovery of service charges from the appellant. The appellant is liable to contribute to those fees in respect of the appellant's flats. Whether the fees are payable and reasonable would depend on whether the Manager was in fact entitled to claim service charges from the appellant.

46. Despite the fact that the service charges have been paid by the appellant on a without prejudice basis Mr Sissons could not identify on what contingency they might be repayable and said the appellant did not intend to repay those monies to itself even if this appeal succeeded. After taking instructions Mr Sissons gave the Tribunal an undertaking on behalf of the appellant that, whether or not the appeal was successful, the appellant would not seek to recoup any sums paid by way of service charges in respect of any period during which the management orders were in force save the Manager's professional fees mentioned above and save to the extent that any service charge was not reasonably and properly incurred.

47. In order to determine the construction issue it is necessary to refer to the terms of the management orders. The June 2011 order simply states that the appointment is "on the same terms and conditions as previous orders." That assumes the previous orders were on the same terms. They were not but there is no suggestion of any relevant inconsistency.

48. Paragraph 1 of the June 2009 management order appoints the manager "for an interim period of 12 months with effect from 24 June 2009". Paragraph 3 states:

> "During the period of the appointment, the Manager shall collect all the various funds reserved and made payable by the Lessees ("the Lessees") in the respective leases ("the Leases") of the flats ("the Flats") in the property including but not limited to:
>
> a. Ground rent
> b. Insurance rent
> c. Service charges
> d. And the arrears of any of the above"

49. Paragraph 4 refers to documentation and paragraph 5 states:

> "During the period of appointment the Manager shall carry out the management obligations of Drysdale Dwellings in accordance with the provisions of the Leases and in particular without prejudice to the generality of the foregoing:…"

There follows a long list of management functions including establishing the current balance of the service charge and reserve fund, establishing an account for them, appointing accountants to prepare accounts, insuring the Property, arranging for surveys to be carried out and drawing up plans of work. The order continues:

> "g. He shall observe the [Landlord's] covenants under the Leases in respect of the flats in the property with regard to insurance, repairs, services and alterations to the property.
>
> h. He shall enforce the Lessee's covenants"

Provision is also made for the Manager to charge a fee.

50. The January 2011 management order was later found to be invalid, but as its terms were incorporated into the June 2011 management order by reference, its terms remain relevant. Paragraph 3 states:

> "The Manager shall manage the Property in accordance with:
>
> (a) The directions and schedule of functions attached to this order.
>
> (b) The respective obligations of the landlord under the leases… and in particular with regard to repair, decoration, provision of services and insurance of the Property…."

51. Paragraph 2 of the Directions states that

> "The Manager shall during the period of the appointment collect all the various funds reserved and payable by the Lessees ("the Lessees") in the respective Leases ("the Leases") of the flats ("the Flats") and in the property including but not limited to (a) Ground Rent (b) Insurance (c) Service charges and (d) the arrears of any of the above. The Manager shall account forthwith to the Respondent for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants in the said leases."

52. Provision is again made for payment of a fee and the Manager is directed to maintain a service charge and reserve fund account, arrange for the preparation of accounts and to use existing reports on the Property to prepare a plan of work. The Schedule of Functions and Services requires (in summary) the Manager to insure the Property, administer the service charge and maintain the Property.

53. I have already identified the test which Mr Sissons submitted should be adopted towards construction of the orders (paragraph 41 above). However, he did not take issue with the test which the LVT set out for itself in paragraphs 60 to 62 of the decision. In summary this is that the object is to explain the orders, not to supplement or improve them, it is to be assumed that the orders were intended to be effective and if a sensible, natural and proper reading permits them to require the appellant to pay service charges to the Manager they should be read in that way.

54. Whichever approach is adopted, in my judgment the LVT correctly construed the orders as requiring the appellant to pay service charges to the Manager pursuant to clause 5(2) of the leases. In my view this is most clearly evident in the wording of paragraph 3 of the January 2011 management order. This requires the Manager to 'manage the Property in accordance with the respective obligations of the landlord under the leases and in particular with regard to repair, decoration, provision of services and insurance of the Property'. The obligations of the landlord under the leases include clause 5(2) which itself plainly includes (as the LVT found) an obligation by the landlord to

pay service charges in respect of the appellant's flats. Service charges by definition relate to the 'repair, decoration, provision of services and insurance' of the Property.

55. That this is the correct construction is not surprising. In the LVT decision of 17 January 2011 which led to the making of the management order, attention was specifically drawn to an ambiguity in the June 2009 management order. This related to what would happen on expiry of the order rather than the construction issue but it shows the LVT were alive to the need for careful drafting. Further, the LVT's reasons for making the order include this:

> "We were also troubled by the failure of the Respondent to pay the proportion of service charges for the five properties owned by them…" paragraph 42

Thus, whether or not the appellant's representative told the LVT that the reason service charges had not been paid was because they were not payable on the wording of the June 2009 management order, one reason the LVT made the management order in January 2011 was because the appellant was not paying service charges. It is to be expected therefore that the LVT would make an order the terms of which enabled the Manager to recover such monies from the appellant.

56. To the extent that the LVT was expressing a view to the contrary in its letter dated 27 July 2011, that was an informal opinion given 6 months after the order was made, it is not clear whether the chairman was the same as the one which sat on the panel that made the January 2011 management order and, significantly, it is clear that s/he was unaware of the terms of the lease.

57. Although the June 2009 management order may not be quite as clear in that it does not refer to 'the obligations of the landlord' in the same way, in my judgment it also requires the appellant to pay service charges to the manager. Paragraph 5 requires the Manager to carry out the management obligations of the Property 'in accordance with the provisions of the Leases' which is wide enough to embrace payment of service charges pursuant to clause 5(2). It is true that paragraphs 5g. and 5f. make specific provision for the Manager to observe the appellant's covenants with regard to insurance, repairs, services and alterations and to enforce the lessee's covenants but do not mention enforcement of the appellant's covenant in clause 5(2). However, the obligation to manage in accordance with the provisions of the leases has to be read in the context of the order as a whole and its purpose.

58. The June 2009 management order contains detailed provisions the object of which is to ensure that the Property is insured, maintained, that steps are taken towards carrying out repair work, that service charges are paid and the service charge and reserve funds are properly administered. Clause 3, which empowers the Manager to collect 'all the various funds reserved and made payable by the lessees in the respective leases of the flats in the property', does not refer to only 7 flats and clearly envisages that service charges will be paid in respect of all the flats. Although the appellant is not a 'lessee', clause 5(2) imposes an obligation to comply with the lessees' covenants i.e. that the appellant should stand in the shoes of the lessee for that purpose. Paragraph 2 of the Directions to the January 2011 order contains a similar provision.

59. As the court said in *Cawsand Fort Management Co Ltd v Stafford* at paragraph 34, the practical purpose of these provisions of the 1987 Act is

> "to protect the interests of lessees of premises which form part of a building by enabling them to secure, through the flexible discretionary machinery of the appointment of a manager, the carrying out of the management functions which they are entitled to enjoy "in relation to" the premises of which their flats form part."

Even though there is no evidence that in June 2009 the LVT was aware of the need to ensure the appellant paid its' share of the service charges, the intention of the LVT was plainly to ensure that the Property was properly managed and that the management order was effective to achieve that. Mr Sissons frankly accepted that, on his client's approach to construction of the management orders, management of the Property would be impossible. It is therefore to be expected that the LVT would make a management order the terms of enabled its purpose to be achieved rather than for its purpose to be entirely thwarted and as the LVT said (paragraph 61), if the management orders are sensibly capable of being read in such as was as to achieve their purpose, they should be read in that way.

60. For all these reasons, in my judgment the management orders can properly be construed so as to include an obligation by the appellant to pay service charges to the Manager in accordance with clause 5(2) of the leases.

61. Accordingly this appeal is dismissed.

62. This decision is final on all matters other than costs. The parties may now make submissions on costs and a letter giving directions for the exchange of submissions accompanies this decision. As agreed by both parties at the hearing, any such submissions must be made within 7 days. The parties attention is drawn to the restrictions as to the award of costs in rule 10 of The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 as amended by The Tribunal Procedure (Amendment No. 3) Rules 2013.

Dated 16 January 2015

Her Honour Judge Alice Robinson

Costs addendum

63. Mr Jeffrey on behalf of the respondents has applied for his costs of preparing for and attending the hearing on 8 January 2015 in the sum of £1845. There was no response on behalf of the appellant to this application.

64. Despite the fact that paragraph 62 of the Tribunal's decision drew the parties attention to the provisions of rule 10 of The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 as amended by The Tribunal Procedure (Amendment No. 3) Rules 2013, Mr Jeffrey's application for costs does not mention rule 10 or explain on what basis the Tribunal should order costs in this case pursuant to that provision.

65. By virtue of rule 10, as amended, the Tribunal may only award costs in appeals from the LVT or FTT in limited circumstances, namely

(1) Rule (10)(3)(a): a wasted costs order against a party or his representative

(2) Rule 10(3)(b): if a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings

(3) Rule 10(14): requiring reimbursement of fees.

No application for wasted costs or for reimbursement of fees has been made. In his application for costs Mr Jeffrey does not assert that the appellant acted unreasonably in bringing or conducting this appeal. However, as this is the only basis on which an award of costs could be made I have considered application in the light of rule 10(3)(b).

66. While the respondents regarded this appeal as another attempt by the landlord to evade what the respondents regarded as its responsibility to pay service charges, the appellant is entitled to pursue its legal rights providing it does so reasonably. The appeal was not academic for the reasons set out in paragraph 45 above. Further, permission to appeal to the Tribunal was granted on the basis that the appellant's case as to the proper construction of the management orders was arguable. I agree with that assessment. Although the appellant has lost, its' case was not hopeless nor has the appeal been brought frivolously. The submissions made on behalf of the appellant required careful consideration and in my judgment the appeal was not brought, nor was it conducted, unreasonably. The application for costs is refused.

Dated: 13 February 2015

Her Honour Judge Alice Robinson

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FAO Ms Jaqueline Benjamin (Case Officer)
Property Chamber
London Residential Property FTT
10 Alfred Place
London
WC1E 7LR

11th October 2017

By email and first class post

Dear Ms Benjamin

Re: Canary Riverside LON/00BG/LAM/2015/0012

Thank you for the decision dated 29th September 2017 and the amended management order, received on Wednesday 4th October.

We are writing to the Tribunal to request clarification arising from the decision and revised management order, to ensure that there can be no doubt nor confusion regarding the respective responsibilities and obligations (in respect of the residential leases) that the management order confers upon Mr Coates and the landlord. We make this request because the decision appears not to address matters affecting the residential lessees that were the subject of the eight days of hearings before the Tribunal.

We also write to request that two apparent errors be corrected under the Tribunal's slip rule 50.

The decision

There is no reference in the decision clarifying responsibility in respect of granting consents for alterations, the preparation of sales packs for lessees seeking to sell their flats etc. There has been disagreement between Mr Coates and the landlord over such matters, and this was raised during the hearing.

It may be that the Tribunal considers the following two paragraphs from the management order to be sufficient clarification:

- Paragraph 5 of the management order appears clear that Mr Coates is to manage the development "in accordance with the obligations of all parties – landlord and tenant – under the Leases".
- Paragraph 6 provides that no one is entitled to exercise a management function where that function is vested in Mr Coates.

We note that these same paragraphs were in the original order which took effect on 1st October 2016 (paragraphs 2(b) and 3 of that order).

The need for clarity

We interpreted those paragraphs as meaning Mr Coates is the person who is responsible for all aspects of the residential leases, including dealing with consents for alterations and issuing sales packs. The only exception to this, clarified in the Tribunal's recent decision, appears to be in respect of placing the buildings insurance.

However, over the past year it has become clear that the landlord does not interpret the effect of these paragraphs the same way that we do. For example, the landlord's most recent communications to residential lessees suggested that they would be entitled to bring forfeiture proceedings if an individual lessee allowed their visitors or estate staff to use their demised parking space. It is our understanding that the decision as to whether there are grounds for forfeiture is Mr Coates's, as manager.

As lessees, we need the management order to be absolutely clear about the rights and responsibilities vested in Mr Coates and those, if any, that the landlord may still exercise in relation to the residential leases. The current confusion is undermining the intended effect of the management order. Many lessees assume that, as 'manager' Mr Coates has simply replaced the managing agent, with the landlord retaining ultimate management responsibility for the estate – an assumption reinforced by the landlord's letters to them concerning their lease.

We therefore ask that the Tribunal provide explicit confirmation that, unless stated to the contrary within the management order, paragraphs 5 and 6 of the order should be taken to mean that Mr Coates is responsible for all aspects of the residential leases.

Clerical errors

We ask that the following typing mistakes be corrected under the Tribunal's slip rule 50.

Decision: Paragraph 39: "…thus expiring on 31 August 2020" [not 2010].

Management order: Paragraph 18: "…for a period of three years from 1st September 2017 [1st October 2016 was the effective date of the old ('draft') order].

Finally, while we appreciate that the Tribunal has other cases to deal with, we wish to express disappointment that it took nearly four months for the Tribunal to produce a nine-page decision, especially given all the other delays we have encountered since making our application in June 2015. We hope our requested clarification can be provided swiftly, so that residential lessees can be clear as to the management order's impact on their legal rights and responsibilities per their leases, and that the Tribunal's order facilitates the effective management of the estate.

Thank you in anticipation. We look forward to hearing from you.

Yours sincerely

Pp RACR

On behalf of the joint applicants to the section 24, Canary Riverside

Cc: Mr Alan Coates
Trowers & Hamlyn

HM Courts & Tribunals Service

Property Chamber
London Residential Property
First-tier Tribunal

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Your ref:
Our ref: LON/00BG/LAM/2015/0012
LON/00BG/LVM/2016/0020
LON/00BG/LVM/2016/0023

Date: 13 October 2017

Dear Sirs

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

PREMISES: Canary Riverside Estate, Westferry Circus, London, E14

The tribunal is in receipt of the letter from the Residents' Association at Canary Riverside dated 11 October and having reviewed that correspondence makes the following reply.

A correction certificate will be issued in relation to the two minor errors in Paragraph 39 and Paragraph 18 of the Order, respectively, and the tribunal apologises for these errors.

With respect to the other clarification sought, the tribunal is unable to give legal advice, however in order to assist the parties is able to clarify the decision and Order as follows:-

The manager has been appointed to take over the activities of the Landlord in these proceedings not just those of the previous managing agents. The manager has not therefore 'stepped into the shoes of the managing agent', but effectively those of the Landlord.

In the tribunal's view Paragraphs 5 and 6 of the Order confirm that the manager is entitled to manage the development in accordance with the relevant leases and this would include the grant or refusal of permissions and the production of sales packs for sales in relation to the residential units, and these matters were not reserved to the landlord.

The tribunal also clarifies that forfeiture of leases is not a management function that has been reserved to the manager and the ability to forfeit any lease remains with the landlord, subject of course to any prior statutory requirements.

If the parties remain unclear as to the interpretation of the Order, they should seek independent legal advice.

Yours faithfully

Ms Jacqueline Benjamin
Case Officer

cc Downs Solicitors LLP, Trowers & Hamlins LLP, Yianis Hotels Limited, YFSCR Limited, Palace Church 3 Limited

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BG/LVM/2016/0020**
Property	:	**Canary Riverside Estate, Westferry Circus, London E14.**
Applicant	:	**The Leaseholders of Canary Riverside**
Representative	:	**The Residents' Association of Canary Riverside**
Respondent	:	**Octagon Overseas Limited (1)** **Canary Riverside Estate Management Limited (2)** **Palace Church 3 Limited (3)** **YSCR Limited (4)** **Yiannis Hotels (5)** **And Mr. A. Coates tribunal appointed manager.**
Representative	:	**Mr. J. Bates of Counsel for (1) and (2);** **Mr. N. Yeo of Counsel for (3), (4) and (5)** **Ms. A. Gourlay of Counsel for the Manager.**
Type of Application	:	**Correction certificate**
Tribunal Member(s)	:	**Ms. A. Hamilton-Farey** **Mr. L. Jarero BSc FRICS**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**13 October 2017**

DECISION

As Chairman of the Tribunal, which decided the above-mentioned case, I hereby correct the errors and clarify the decision dated 29 September 2017 as follows:[1]

1. The date identified in Paragraph 39 of the Decision should read 31 August 2020 and not 2010 as stated. And;

2. The period of the management order as identified in Paragraph 18 of that Order should be three years from 1 September 2017 and not 2016 as drafted.

Name: Ms. A. Hamilton-Farey
Mr. L. Jarero

Date: 13 October 2017

[1] Regulation 50 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Residents' Association of Canary Riverside
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17 October 2017

FAO Ms Jaqueline Benjamin (Case Officer)
Property Chamber
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10 Alfred Place
London
WC1E 7LR

By email and first class post

Dear Ms Benjamin

Re: Canary Riverside LON/00BG/LVM/2016/0020

We write further to our letter to you of 11 October (attached for ease of reference), and in response to Trowers' letter to the FTT dated 16 October.

We are conscious that the date by which any application to appeal the FTT's recent Decision is this Friday (20 October). If the Tribunal is unable to provide the clarifications requested below we would ask for permission to appeal the FTT's Decision.

We had not seen Trowers' letter of the 10th until yesterday. It is clear that, despite the FTT issuing a new Management Order following the eight-day hearing, there are still considerable differences in the interpretation of the Order by the parties. This confusion continues to undermine the intended effect of the Order, detrimentally affecting the management of the estate.

We urgently seek the FTT's clarification of the new Management Order, specifically in respect of who is responsible for:

1. Granting consents for alterations.
2. Preparing and issuing sales packs to lessees seeking to sell their flat.
3. Notices of Assignment.

In respect of these three points we also ask that the Tribunal provide reasons for its decisions, including referring to the evidence that has caused it to come to that decision.

We also ask if the Tribunal would please confirm whether it took the lessees' submissions into account in reaching its Decision.

Yours sincerely

Pp RACR

On behalf of the joint applicants to the Section 24, Canary Riverside

Cc: Mr Alan Coates
Trowers & Hamlyn