

**IN THE FIRST TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**

**Case Ref: LON/00BG/LVM/2018/0005**

**IN THE MATTER OF CANARY RIVERSIDE ESTATE, WESTFERRY CIRCUS, LONDON E14**

**B E T W E E N:**

**ALAN COATES**  
**(Tribunal Appointed Manager)**

**Applicant**

**-and-**

**OCTAGON OVERSEAS LIMITED (1)**  
**CANARY RIVERSIDE ESTATE MANAGEMENT LIMITED (2)**

**Respondents**

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**APPLICANT'S SCHEDULE OF ISSUES**

**OUTSTANDING ON HIS APPLICATION TO VARY THE MANAGEMENT ORDER**

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	<b>ISSUE</b>	<b>REF</b>	<b>RESPONDENTS' REPLY</b>	<b>LEASEHOLDERS (INTERESTED PARTY) REPLY</b>
	<b>Provision of service areas</b>			
1	Areas which form part of and/or relate to the Manager's management functions	SoC paras.9- 40	The Applicant is only granted functions that he is required to discharge under the Management Order. He does not have a proprietary interest in the Estate and the Management Order cannot confer him such	The landlord's refusal to allow the manager/HML to utilise the offices, staff welfare, workroom and storage facilities located within the estate is to the detriment of good estate management and demonstrates that the landlord continues to put its own interests

		<p>Supp SoC</p> <p>Para.11</p>	<p>rights. The issue of service areas has also been raised by the Applicant in the past and the FTT rejected this argument. Finally, paras. 14 - 40 of SoC have nothing to do with the provision of service areas.</p>	<p>before those of the estate. It is no coincidence that the apparent subletting of these areas coincided with the S24 application. CREM's failure to notify the FTT and S24 applicant leaseholders of the existence of any occupational licenses, even when directly asked by the FTT (LH4), appears to be a tactic designed to maximise the disruptive impact on the management of the estate. In March 2017 CREM removed all of the furniture and equipment within the estate offices located within Eaton House (38 Westferry Circus) and literally dumped them in the residential lobby (LH7). This was not the actions of a reasonable landlord seeking to comply with the Order.</p> <p>In respect of the service charge the areas concerned are not 'demised': they do not fall within the estate cost allocation model and do not attract a service charge demand. This is because they were never intended to be sublet and were instead designed to meet the operational management needs of the estate. They were also not subject to business rates.</p> <p>The occupants of these areas are now being subsidised by leaseholders. The associated running costs are paid either by residential lessees (for areas located within the residential buildings) or the estate charge which is allocated to residential, commercial and car park lessees. Residential lessees are responsible for paying three quarters of the total service charge.</p> <p>The parties to whom the licences have been granted are all companies related to the ultimate owner of Canary Riverside, Mr Christodoulou (Yianis). Residential leaseholders are therefore subsidising the landlord's companies.</p> <p>The majority of areas can only be accessed by way of entry into the residential buildings, either at basement (car park) or street level. CREM has shown a total disregard for the security of the residential leaseholders by granting non-residents full access to the residential buildings.</p> <p>CREM has claimed that its loan with Santander requires it to maximise income from the estate. This is potentially spurious for a number of reasons:</p>
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				<ul style="list-style-type: none"> <li>• From 2004 onwards CREM’s ownership of the estate has always been subject to charges (as documented at Companies House), with loans secured by the estate. The areas concerned have been used by and for the management of the estate since 2000.</li> <li>• No evidence has been provided to indicate that Santander’s loan, taken out in March 2015, required CREM to rent out basement rooms and the estate office, all of which had been used to the benefit of the management of the asset secured by the loan. The loan agreement is a standard document.</li> <li>• No reference to the occupational licences were made by Eversheds, CREM’s legal advisers, in any document nor at any time during the S24 proceedings throughout 2015 and 2016.</li> <li>• Eversheds had asked that the FTT direct the applicant leaseholders to send a copy of the S24 application and a copy of the draft Management Order to all commercial leaseholders, and a list of the relevant leaseholders was in circulation (LH4). At no time did Eversheds alert the FTT or applicant leaseholders to the existence of other occupants who would have been ‘Interested Persons’ in respect of the S24 proceedings.</li> <li>• Following the S24 hearing the FTT wrote requesting that the landlord supply details of ‘Other Occupational Agreements’. (LH4). Eversheds’ response made no mention of licenses for the disputed areas – presumably because at that time they were not in existence.</li> </ul> <p>The FTT’s determination on the scope of CREM’s failings in respect of financial management and failure to maintain the estate did not result in Santander calling in the loan. CREM should seek to provide alternative accommodation for the (related) companies currently occupying the estate space and restore these areas for use in the management of the estate, for the benefit of all tenants and in the interest of good estate management.</p>
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2	The extent to which the Manager has access and control over those areas	Supp SoC Para.13;15	Legally impossible to be granted possession (e.g. occupation and control). Access is also subject to third party rights.	See comment above
3	Whether the Respondents have prevented access to those areas by granting subleases or licences	Supp SoC Para.12; 14	<p>CREM made numerous offers to the Applicant regarding various areas on the Estate but he either ignored these or refused to accept the terms.</p> <p>CREM is perfectly within its right to grant subleases/licences to third parties, especially as it has an obligation under the terms of the Santander loan to maximise income from the Estate.</p>	See comment above
	<b>Penal Notice</b>			
4	<p>Whether CREM's failure to provide accounting information and electricity accounts justifies a penal notice to be attached to the management order</p> <p>Issue (3) is also relevant to the appendage of the penal notice</p>	<p>SoC, paras. 14- 15; 18- 21; 52</p> <p>Supp SoC Para.16-17</p>	<p>This is not applicable as the application for a penal notice only relates to Marathon Estates and not CREM as per the FTT's directions.</p> <p>The Applicant is trying to push this through the back door, as no penal notice was requested in relation to issue 3 when the terms of the Order were agreed in July 2018 and it should not be entertained. Further, it is not understood how a penal notice could be attached in this respect.</p>	<p>A penal order should be made against CREM, whose actions have clearly been intended to obstruct the manager. Marathon Estates is an associated company, whose staff were managed by Ms Louise Berwin of Westminster Management Services and not by Richard Paul, the nominal beneficial owner of Marathon Estates.</p> <p>CREM's actions have been to the detriment of the estate, in respect of the continuity of management and the additional costs incurred as a result of the failure to pass documents and records to the manager.</p>

5	To what parts of the management order should the penal notice be attached		This has not been particularised and makes no reference to the SoC nor the Supp SoC. The only part that is relevant is whether a penal notice is to be made against Marathon as per the directions of the FTT, on which CREM cannot comment.	
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## CANARY RIVERSIDE ESTATE MANAGEMENT AND OCTAGON OVERSEAS LIMITED

## SCHEDULE FOF ISSUES FOR HEARING ON 4- 5 DECEMBER 2018

(arising from applications dated 9 February 2018 and 27 June 2018)

Number	Source	Issue	Pursued by CREM/Octagon etc?	Summary of CREM/Octagon etc position	Summary of Mr Coates' position	Summary of s24 applicant leaseholder position (Interested Party)	FTT decision
1	Application dated 9 February 2018	Whether Mr Coates should register the order against specified title numbers	No – dealt with in para.17 of the most recent management order	NA	NA	NA	NA
2	Application dated 27 June 2018, para 4.1	Whether CREM/Octagon should be entitled to recover their costs of complying with the management order	Yes	Otherwise this makes compliance with the management order a penal process; the costs that are associated would usually be considered a service chargeable item	Disputed. (a) Fails to specify what costs of compliance. (b) Proposed variation too wide. (c) Importance of (a) and (b) can be seen in these examples: (i) CREM are seeking costs of providing information which they had been ordered to provide in October 2016 at no cost to the leaseholders and on 26 June 2017 and 12	No. Unlike enfranchisement and RTM, S24 is fault-based. A landlord should not be compensated for costs it incurs as a result of its failure to meet its statutory obligations.  The Order arises solely as a consequence of CREM's mismanagement of the estate and failure to address the issues detailed in the S22 Notice, despite having been given 12	

					<p>July 2017 was information which the leaseholders had already paid.</p> <p>(ii) Leaseholders should not be required to pay for CREM to issue proceedings against MEL to obtain information which is in CREM's possession which would be contrary to para.30 of the Management Order (as amended on 18 July 2018) .</p> <p>(d) Noted that CREM/ Octagon do not repeat their assertion in their Grounds of Appeal that it was agreed that they would be entitled to their costs.</p>	<p>months to do so.</p> <p>If the FTT were to allow costs <u>at any level</u> it would in effect be penalising the leaseholders for having succeeded in their action to remedy poor management and unreasonable service charges.</p> <p>CREM's costs of compliance have arisen as a direct consequence of their serious breaches of the lease, RICS Code and legislation.</p> <p>Leaseholders have already been penalised: they have had to pay &gt;£220,000 of CREM's legal fees despite the fact CREM lost the S24 action, and they have also borne the considerable legal costs and management fees incurred by the manager in respect of CREM's applications to vary the Order.</p>	
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3	Application dated 27 June 2018, para.4.2	Frequency of reporting by Mr Coates to CREM/Octagon	No – dealt with by para 11 of schedule to management order		(a) Noted this is no longer pursued. (b) Noted that CREM/ Octagon do not repeat their assertion in their Grounds of Appeal that it was agreed that they would be entitled to their costs.	No comment	
4	Application dated 27 June 2018, para.4.3	The FTT found that Mr Coates is not responsible for pre-appointment arrears so he should not be responsible for pre-appointment debts (but he should be ordered to pay to CREM/Octagon sufficient sums to discharge the outstanding pre-	Yes	The FTT just has to order Mr Coates to pay to CREM/Octagon sufficient sums to discharge the outstanding pre-appointment debts	(a) The FTT did not expressly deal with the point (which explains the absence of a reference in CREM/ Octagon’s Grounds of Application dated 27 June 2018 or in their Grounds of Appeal dated 26 October 2017). (b) Paras. 4(a) and (f) of the Management Order do not expressly support CREM/ Octagon’s case. (c) The Manager has collected arrears	No decision should be made on this matter in isolation from the overall cash/debtor position faced by Mr Coates. It is apparent that debts associated with the Yianis group of companies, which include the hotel and Mr Christodoulou (Yianis), are having a significant impact on the manager’s ability to provide estate services. This appears to be a tactic designed to frustrate Mr Coates’ management.  It also demonstrates that CREM/Yianis is continuing to act in its own best	



		<p>appointment debts)</p>			<p>accrued pre-appointment but the Manager has also paid bills relating to periods pre-appointment.                  (d) It is not a simple accounting exercise because: (i)not all monies were collected from leaseholders;(ii) CREM/ Octagon have failed/ refused to provide evidence of invoices and works undertaken; and (iii) it would need to be offset against bills already paid by the Manager from service charge funds.                  (e)The FTT cannot order the Manager to pay sums without evidence that costs incurred, works undertaken, works undertaken to a reasonable standard, and that <u>all</u> service charges were paid to the Manager in</p>	<p>interests and not in the best interest of the estate and its stakeholders.                   This issue cannot be taken in isolation from the overall financial position inherited by Mr Coates on 1 October 2016, nor the level of debt that has accumulated since in respect of landlord-related tenants at the estate.</p>	
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					<p>respect of those costs. Thus far, CREM has failed to provide the evidence.</p> <p>(e) The solution is that the Manager pays the pre-appointment debts (subject to evidence that these costs were incurred, works undertaken, and works undertaken to a reasonable standard).</p>		
5	Application dated 27 June 2018, para 4.4	Two erroneous references to rents / other monies being collected by Mr Coates should be removed	Yes	There are no other rents or other monies collected	<p>(a) Whilst there was no express agreement (and CREM/Octagon cannot point to evidence of an agreement), the Manager does not collect rent Canary Wharf, charges, nor commercial service charges which do not relate to shared services.</p> <p>(b) The wording "other monies" does not need to be</p>	n/c	

					included in para. 4(i) and para. 5 of the Management Order so long as CREM/ Octagon expressly accepts (and it is recorded as such) that the Manager has power to collect electricity charges, water charges, and any other charges incurred in the delivery of any residential or shared service of whatever nature.		
6	Application dated 22 June 2018, para 4.5	Clarification that the power to compromise etc needs to be exercised with the consent of the landlord; ensure consistency between opening part of para.4(i) of the management order and final part	Yes	Manager cannot act "on behalf of" the landlord or otherwise step into the shoes of the landlord, hence the need for consent	The Manager agreed to the addition of the words "with the consent of the Landlord" in the Respondent's Comments dated 1 February 2018 Manager subject to proviso that the indemnity provision in para. 4(j) must remain. The Manager is willing to agree to alternative	Consent should not be unreasonably withheld.	

					additional wording, namely, that “the Landlord’s consent is not to be unreasonably withheld.”	
7	Application dated 27 June 2018, para 4.6	Inspection of documents	Yes – this is dealt with by para.28 of the schedule to the most recent management order for the 2016 accounts but needs to be dealt with for the accounts going forward to the extent that Mr Coates refuses to comply with para7 of the Schedule.		Unclear what is meant by “needs to be dealt with” and makes little sense because: (a)it does not require any variation to the management order; (b) if further variation is proposed, it has not been specified and would any event fall outside the scope of the application dated 27 June 2018 and the FTT order of 18 July 2018; and (c)the Manager has permitted inspection as per the Order in January 2018 and 10 September 2018.	<p>This matter sums up CREM etc’s contempt for leaseholders.</p> <p>CREM failed to provide leaseholders access to inspect the accounting records for the service charge accounts produced under its management – despite having been directed to do so by two Tribunals. It has taken advantage of the S24 appointment to completely ignore its responsibilities: lessees have had no access to the records for the 2016, 2015, 2014 or 2013 accounts and have no recourse.</p> <p>At the July 2018 hearing CREM’s barrister threatened Mr Coates with</p>

						<p>criminal action for not complying with its S21 request.</p> <p>It is ironic that CREM is using the S24 Order made against it to try and enforce a right that it has consistently denied to leaseholders – a fact that informed the FTT’s decision to appoint a S24 manager.</p> <p>Had the S24 action not been taken, leaseholders would probably still be waiting for 4 years’ accounts to be produced by CREM.</p>	
8	Application dated 27 June 2018, para 4.7	Impose duty on Mr Coates to supply documents to CREM/Octagon insofar as they need them to meet statutory obligations	Yes	CREM/Octagon need to be able to satisfy their statutory duties	(a)CREM/ Octagon must be specific about the statutory obligations (b)The application related to the Carbon Reduction Commitment energy efficiency scheme. (c)Any variation proposed is too broad and without	CREM need to specify what these documents are so it can be determined as to whether this is an estate service and therefore included within the management fee charged to the service charge. If it is an additional task the manager should be separately charging CREM.	

					<p>justification.</p> <p>(d)The Carbon Reduction Scheme only relates to suppliers of electricity (in this case). HML provide the electricity, not CREM/ Octagon. Therefore, the documents/ invoices are not required.</p> <p>(d) The Manager is content to provide the documents/ invoices but only if it can be shown by CREM/ Octagon that they are able to partake in the Carbon Reduction Scheme.</p> <p>(e) The manager had already made available the invoices for copying on 10 September 2018 and it is understood copies were made.</p>		
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					(f) The Carbon Reduction Scheme will no longer be in operation from 2019.	
9	Application dated 27 June 2018, para 4.8	Responsibility for sales packs, notices of assignment etc under the leases	No – now been clarified by FTT decision that the Landlord deals with these and refusal of permission		Agreed. See Management Order as varied on 18 July 2018	<p>CREM has yet to provide the FTT and manager with its schedule of fees for such services. This was originally requested by Ms Hamilton-Farey during the variation hearings in 2017. The majority of information required for the sales pack is provided by HML: lessees should not be made to pay twice.</p> <p>This is a matter of transparency. The manager was required to disclose his schedule of fees: CREM must be directed to do the same. Not to do so is a continuance of the lack of transparency by CREM that lay behind the FTT's decision to appoint a manager.</p>

10	Application dated 27 June 2018, para 4.9	Mechanics for reimbursement of insurance costs by Mr Coates to CREM/Octagon	Yes	CREM/Octagon need to be paid for the costs they incur in placing the insurance; two possible models are proposed in the application	<p>The insurance will be paid twice a year once the sums are collected from the leaseholders in accordance with the underleases.</p> <p>Otherwise, CREM/Octagon are asking for sums to be paid which are not yet collected from the leaseholders or asking the leaseholders to pay sums contrary to the underleases.</p> <p>(b)CREM/ Octagon refuse to provide the basis of the calculation of the insurance premiums, and claim the Manager cannot challenge the sums demanded, on the basis that the Manager is only the collector of sums due from the leaseholders.</p> <p>Accordingly (i) it</p>	<p>By including buildings insurance in the original Management Order the leaseholders would be assured of transparency in respect of premiums and their allocation in the accounts.</p> <p>As a result of CREM's variation application, which claimed their loan required that responsibility for insurance remain with the landlord, there is now even less transparency in respect of insurance premiums. This is clearly an unjust outcome which the FTT has a duty to resolve.</p> <p>There can be no justification for the landlord's refusal to furnish the manager with details of the basis of the calculation of insurance premiums. Having agreed that CREM at al can retain</p>	
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					<p>must be agreed by CREM/ Octagon that any sums payable by the leaseholders may be challenged by proceedings brought against CREM/ Octagon; (ii) that the Manager is not required to pay the insurance in relation to those leaseholders who remain in arrears.</p>	<p>responsibility for placing insurance the FTT should direct CREM to make full disclosure to the manager of supporting documents in respect of insurance valuations, insurance premiums and commissions paid. It is inconceivable that LHS should be the extent of information available for a mixed-use estate the size of Canary Riverside.</p> <p>The manager is currently unable to justify to leaseholders the sum charged to them via the accounts, nor ensure that the accounts include the required disclosure in relation to commissions paid to related companies.</p> <p>The manager has indicated that the landlord's companies have received significant commissions from the broker for placing the insurance. These</p>	
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						<p>should be disclosed, particularly given that the manager/HML has responsibility for processing insurance claims – which is usually funded by way of these commissions.</p> <p>The FTT cannot allow CREM to continue with its failings in respect of transparency given the fact one of the reasons the manager was appointed was to address the fundamental lack of financial transparency at Canary Riverside.</p> <p>The manager should be entitled to offset against CREM/landlord-related debt.</p>	
11	Application dated 27 June 2018, para 4.10	Three specific aspects of estate management (reporting on issues relevant to commercial units; washing windows;	Yes	CREM/Octagon need to be told about issues relating to the commercial properties; window cleaning needs to be done; provision needs to be made for reimbursement	(a)Notification of issue affecting commercial premises: this needs to be more specific because CREM have no management function in relation to shared services.	Window cleaning is not an estate (common) service. The commercial leases do not appear to include window cleaning – except in respect of Circus apartments, which, for the provision of services and	

		insurance costs)		of ancillary insurance costs not covered by previous UT/FTT decisions	<p>The Manager is content to agree to notify CREM of issues relating to the commercial premises alone which affect the Manager’s obligations and functions as soon as reasonably practicable.</p> <p>(b) For the avoidance of doubt, the issue of “grease pipes” concerned matters outside the scope of the Manager’s obligations and functions under the Management Order.</p> <p>(c) The Manager agrees to wash the windows of the commercial units where they are within blocks of demised residential premises so long as the Manager can charge the lessees/ licensees of the commercial premises</p>	<p>the associated service charge, is treated as a residential lease.</p> <p>CREM should direct the manager/FTT to the appropriate lease clauses in respect of each service it claims is required per the lease and associated service charge.</p> <p>CREM should specify what ancillary insurance costs it is referring to and where these have previously been charged in the service charge.</p>	
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					and/ or CREM the costs of doing so. Cleaning the commercial units is not a shared service. It benefits the commercial unit only. Therefore, the Manager has not been able to collect the service charge, and has not included it in the Budget. (c) What additional costs? The Manager has not been informed of additional costs.		
12	Application dated 27 June 2018, para 4.11	Typographical corrections	No – these have (hopefully) now all been corrected		Agreed	n/c	
13	Issue arising out of para.53 of the Review Decision; email exchange between counsel and FTT after the last hearing	The management order requires a general indemnity be afforded by CREM/Octagon as regards access by Mr Coates	Yes	CREM has placed the insurance so the indemnity is not needed. CREM also cannot be expected to indemnify for third party actions.	The Manager needs to know whether the insurance cover is adequate. At present CREM have not supplied a copy of the insurance cover CREM so it is not possible for the	n/c	

					Manager to identify what insurance cover is missing and not included within the Manager's professional cover.		
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