Case No LON/00BG/AOM/0012

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

Rolls Building
Fetter Lane
London
EC4A 1NL

Friday 30th September 2016

Before:

MR MARTIN RODGER QC
(The Deputy President of the Tribunal)

Between:

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

Applicants/Appellants

and

VARIOUS LEASEHOLDERS

Respondents

MR JUSTIN BATES (instructed by Trowers and Hamlins, Birmingham B3 2QD) appeared on behalf of the Applicants/Appellants

MISS AMANDA GOURLAY (instructed by Solicitors) appeared on behalf of the Respondents

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J U D G M E N T
(As Approved)

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Friday 30th September 2016

THE DEPUTY PRESIDENT OF THE TRIBUNAL:

1. The Tribunal is hearing today an application by Octagon Overseas Limited, the owner of the freehold of a building in Canary Wharf, known as Canary Riverside, and Canary Riverside Estates Management Limited is a party to the occupational leases of the flats in Canary Riverside and is obliged under those leases to provide services and in return is entitled to collect a service charge. The application is for a stay of a decision of the First-tier Tribunal (Property Chamber) made on 23rd September 2016 to appoint Mr Coates as the manager of Canary Riverside under section 24 of the Landlord and Tenant Act 1987. The stay is requested to enable the applicants to finalise their proposed grounds of appeal against the decision and better to inform themselves of communications which it believes took place between Mr Coates and the tribunal on 15th September before its decision.

2. I remind myself first of the power of the relevant tribunal, on an application under section 24 of the Landlord and Tenant Act 1987, to appoint a manager to carry out such functions in connection with the management of the premises, or functions of a receiver as the tribunal shall think fit. Such an order may only be made if certain grounds are made out. Those grounds include a demonstration of a history of breaches of obligation, or unreasonable service charge demands by the landlord; overarching the power is the requirement that the tribunal must be satisfied that it is just and convenient to make the order in all the circumstances of the case. Where an order has been made, the manager who has been appointed acts as the appointee of the tribunal and ultimately under the supervision of the tribunal. The tribunal is empowered under section 24(9), on the application of any person, to vary or discharge the management order.

3. In this case the management order was the culmination of a prolonged process instigated, not for the first time, by leaseholders of flats in Canary Riverside to replace the estate management company with a manager appointed by the tribunal. As far as I am aware, the first application for the appointment of a manager was made in 2003 by Dr Shilling. It was unsuccessful. In 2009 a further application was made. This again was unsuccessful. The Leasehold Valuation Tribunal decided at that time that Lee Baron a manager recently appointed by the landlord, should be allowed an opportunity (as the tribunal put it) "to prove themselves", the application was therefore declined by the tribunal in the exercise of its discretion, although, as I understand it, the tribunal was satisfied that there would have been grounds for an appointment. As it transpired, Lee Baron did not have very much time to prove themselves as they were removed by the applicant from its post as manager in either 2010 or 2011.

4. A substantial group of the leaseholders, required under the terms of their lease to pay service charges which I am informed in some cases amount to sums of £15,000 a year, began the procedure again in May 2014, when they served a preliminary notice under section 22 of the 1987 Act. They allowed a period of one year to elapse to permit the applicants to remedy the breaches identified in their preliminary notice. The First-tier Tribunal subsequently found that during that year there was some activity on the part of the applicants, where previously there had been little or no

activity, towards properly managing the building. There were some changes, but those changes were not sufficient to persuade the tribunal when it gave its initial decision on 5th August 2016 that it was not just and convenient for Mr Coates to be appointed as the manager.

5. The tribunal's initial decision of 5th August made the appointment of Mr Coates conditional. Paragraph 1 of the decision appointed Mr Coates for a period of three years, with effect from 1st October 2016, "subject to the payment on account by at least 70 per cent of the applicants to the application by 1st September 2016 of 50 per cent of the service charge budget provision for the year 2015-16, as contained in the accounts provided to the tribunal in the proceedings". That formulation was regarded by Mr Coates as somewhat opaque and has been the cause of a certain amount of difficulty.

6. Both parties were dissatisfied with the tribunal's decision. The leaseholders applied to the tribunal for permission to appeal on the grounds that it had had no jurisdiction to impose such a condition and that the condition, in any event, was unreasonable. The applicants applied to the tribunal for permission to appeal on grounds to which I shall refer in greater detail in a moment.

7. Those applications subsequently led to the First-tier Tribunal reviewing its decision and issuing a further decision on 15th September, which, in effect, dispensed with the condition in paragraph 1 of its original decision. The circumstances in which the tribunal revised its decision included correspondence from Mr Coates, in which he reported to the tribunal on 14th September 2016 that he had collected sums totalling £389,743, which he held in a designated account, such that more than 70 per cent of the applicants had paid their contribution by way of the service charge on account for the period 1st October 2016 to 31st March 2017. He was, therefore, satisfied that he had collected 72.8 per cent of the total amount he had requested of the applicants.

8. As Mr Bates has pointed out, perhaps a more natural reading of the condition was that it did not relate to sums due for 2016-17, but related to historic sums for 2015-16, which Mr Coates did not refer to. Mr Bates contends that as the condition was not satisfied and as the revised decision is subject to the proposed appeal, Mr Coates is not entitled to take office under the tribunal's original order. That submission overlooks the effect of the tribunal's reviewed decision of 15th September 2016, in which it provided quite simply that Mr Coates was to be appointed as manager for three years, with effect from 1st October 2016 without any condition. That decision is currently effective, subject to the application for a stay now under consideration.

9. In a passage at the end of its revised decision, where it provided clarification which had been sought by both parties, the tribunal noted that it had been informed by Mr Coates that he had collected the required contributions from over 72 per cent of the applicants, and said that therefore the condition no longer had effect. I read the tribunal's decision as signifying that it was satisfied that the condition had been complied with. It therefore reviewed its original decision and dispensed with the condition altogether, thereby dealing with the leaseholders' application for permission to appeal which was based on the contention that the tribunal had no power to make an order subject to such a condition.

10. In support of his application for a stay of the revised decision Mr Bates says that he is,

in effect, unable to put forward his properly developed grounds of appeal because there has been correspondence between Mr Coates and the tribunal – in particular, a letter on 20th September 2016 – dealing with the satisfaction of the condition, which had not been copied to the applicants.

11. I am satisfied, in the light of the revised decision of the tribunal that there is no question at this stage of Mr Coates' appointment being conditional on the satisfaction of the original condition, whatever it meant. Mr Coates wrote to the tribunal on 14th September, informing it of how much money he had collected, and the tribunal appear to have been satisfied on the basis of that information, which was clearly explained, that the condition it had imposed was satisfied. I find that puzzling because the condition had appeared to relate to an earlier period, but, nevertheless, the tribunal was content that Mr Coates had sufficient funds to satisfy the condition.

12. More importantly, there is a letter that Mr Coates wrote to the tribunal a few days later, after receiving its revised decision, on 19th September in which he reported on the funds which by that stage he had collected, which then totalled £407,000. Of the 123 applicants, 91 had paid, representing almost 74 per cent of the number of applicants. He concluded his letter by confirming to the tribunal that the funds that he had collected satisfied him that he was able to begin work as the receiver and manager at Canary Riverside on 1st October 2016.

13. There is no reason for this tribunal to go behind that statement of Mr Coates that he is satisfied he has sufficient funds. But there remains the untidy manner in which the original condition was dealt with. It is said by Mr Bates that the applicants are concerned that Mr Coates will have had insufficient funds to discharge his obligations as manager, and that they ought to have had the opportunity to be heard by the First Tier Tribunal on the sum required as a condition; or, more importantly, if the condition was to be treated as satisfied, they should have had the opportunity of making submissions on that issue. I agree. While I can understand that the tribunal was acting under considerable pressure of time, and doing the best it could, in an ideal world it would have been better to have allowed the applicants the opportunity to make submissions on the extent of any funds which ought to have been collected, or whether any additional funds were required.

14. That does not, however, seem to me to be a reason in itself for granting permission to appeal, or for granting a stay, because of the effect of section 24(9). If the applicants are concerned that Mr Coates has insufficient funds, despite the fact that he is satisfied he has sufficient funds, then they are entitled to apply to the tribunal and to invite it to give directions to Mr Coates that he should collect further funds. The tribunal could, if it was so minded, direct Mr Coates that, unless he collected the funds which the applicants say are necessary within such time as it thought appropriate, his appointment as manager would lapse. I think the forum in which a decision of that importance which will require a consideration both of the background to the order and of additional evidence, should be made is the First-tier Tribunal and not this Tribunal on an appeal. So I do not regard satisfaction of the condition, or the adequacy of funds as grounds for granting permission to appeal.

15. As the wish to see correspondence about the adequacy of the available funds and the satisfaction of the condition was the basis of Mr Bates' reference for a stay, rather than proceeding with his application for permission to appeal today, it is possible for

me now to consider the grounds of appeal which Mr Bates has presented, with his customary clarity, in writing and has amplified in his oral submissions.

16. The first of the grounds on which Mr Bates requests permission to appeal concerns the First-tier Tribunal's assessment that it was just and convenient to make an order for the appointment of a manager at all, when, it is said, there were no grounds justifying the order. Alternatively, Mr Bates says the tribunal ought not to have been satisfied that it was just and convenient to make an immediate order, but ought to have made a suspended order, if it thought that any order was appropriate. I can consider these proposed grounds of appeal together.

17. When the tribunal considers applications for permission to appeal, it asks itself whether there is a realistic prospect of an appeal succeeding on the proposed grounds. It is not necessary for Mr Bates to persuade me this afternoon that he is right, and that the proposed appeal will succeed, merely that he has a respectable argument which may succeed. That is the test which I apply, and it is the test with the First-tier Tribunal should apply when it is asked to grant permission to appeal.

18. Mr Bates has identified a number of aspects of the First-tier Tribunal's decision which he says, taken collectively, do not amount to a sufficient case to justify the appointment of a manager. I should therefore remind myself of some of the grounds on which the tribunal came to the contrary conclusion.

19. The First-tier Tribunal found that the applicants had misdirected £245,000 of the leaseholders' money collected through the service charge account to meet expenses of the landlords which had nothing to do with the provision of services. The tribunal was satisfied that the landlord, and the management company, had attached no real importance to the management of the services charges at all. The management company had appointed a manager of its own, Marathon Estates Limited, a company connected to the applicants. The tribunal was satisfied that Marathon Estates was not sufficiently experienced in property management to deal even with simple requests such as complying with its statutory obligation to provide details of expenditure or copies of accounts. The tribunal was also satisfied that the applicants had failed to take account of long-term maintenance when determining the amount of the reserve fund. They had not prepared appropriate budgets, and they had received advice about planned preventative maintenance, but had not implemented it.

20. The person principally responsible for day-to-day management, Mr Parojcic, had acknowledged to the tribunal in his evidence that the reserve funds were too low for the expenditure which was anticipated. The tribunal found that invoices relating to legal expenses, totalling £300,000, which had been charged to the service charge account, had not been made available to the leaseholders on request, as they were required to be by section 22 of the Landlord and Tenant Act 1985. Marathon Estates was found not to have sufficient staff or experience to manage the residential block. It was found not to have engaged with leaseholders in relation to the management of the estate, and it was found to suffer from "a muddled hierarchy of command".

21. Having made those findings of fact, the tribunal proceeded to exercise the discretion given to it by Parliament under section 24 of the 1987 Act and to appoint Mr Coates as manager on the grounds that it was just and convenient in all the circumstances that it should do so.

22. The First-tier Tribunal is an expert tribunal with extensive experience of residential property management. In this case it heard evidence over five days and received substantial written argument at the conclusion of the hearing. On an appeal, this Tribunal will not interfere with the exercise of a discretion by the First-tier Tribunal unless it is satisfied that, in making its decision, the tribunal took into account irrelevant considerations, failed to take into account relevant considerations, or made a decision which was so unreasonable that no reasonable tribunal properly directing itself could have arrived at that conclusion.

23. The application for permission to appeal has not been presented by Mr Bates by reference to that standard, but I am satisfied that that is the appropriate inquiry for an appellate tribunal to make when considering whether the exercise of a discretion under section 24 should be interfered with.

24. Applying that standard I am satisfied that there are no grounds on which it would be appropriate for this Tribunal to interfere with the First-tier Tribunal's assessment that it was just and convenient to appoint a manager at the third time of asking and with effect from 1 October I therefore refuse permission to appeal on the first ground.

25. The second ground on which Mr Bates relies is that the terms of the order are disproportionate. The first aspect of that submission is bound up with his first ground, in that Mr Bates says that the tribunal should have considered whether it ought to suspend the order for the manager's appointment. There was no application to suspend the order at the hearing, or in the written submissions made at the conclusion of the evidence. But, as Mr Bates points out, it is open to the First Tier Tribunal to entertain an application for suspension at any time. Mr Bates says that his application for suspension, which was made in his original application to the First-tier Tribunal for permission to appeal, simply was not referred to when permission was refused. It is necessary to record that the First-tier Tribunal refused permission to appeal from its reviewed decision yesterday afternoon (29th September), having convened yesterday afternoon in order to consider the application made earlier in the week. The reason for the urgency is, of course, that the manager is to take up his appointment tomorrow. It is therefore understandable that the tribunal's decision refusing permission to appeal is in an abbreviated form. Nevertheless, in paragraph 5 of its decision the tribunal records, in giving its reasons for refusal of the application, that the new manager is due to be appointed with effect from 1st October 2016, and that the manager has made provision to commence management. Any stay would seriously prejudice the respondents, given the findings of the tribunal of poor management in relation to the estate.

26. Those are adequate reasons, in my judgment, both to refuse a stay and to refuse a suspension of the order, coupled with the First-tier Tribunal's reference to there having been no previous application for a stay.

27. The other aspects of the order which Mr Bates says are disproportionate are, first the power given to the manager under paragraph 1(n) of the order to borrow sums which he may reasonably require for the performance of his functions, and to secure such borrowing, if necessary, on the interests of the landlord in the premises, or any part of the premises, by a notice against the landlord's registered estate.

28. Secondly, Mr Bates objects to paragraph 9 of the order, by which the manager is directed to register a restriction at the Land Registry against the landlord's leasehold estate, and against the interests of Yiannis Hotels Limited in the building – that restriction preventing any disposition of the estate by the proprietor, without Mr Coates' consent.

29. Mr Bates points out that there was evidence before the First-tier Tribunal that the applicants would be prejudiced in that an order in these terms would be contrary to their lending covenants and would create the risk that their chargees would call in the loans which presumably were used by the applicants to acquire the property.

30. The form of the draft order was first put forward in January 2016 in preparation for the hearing which took place in May. When the tribunal's first decision was promulgated on 5th August it invited the parties to provide a clean copy of the order reflecting its decision. It has not been suggested that the terms on which Mr Bates now focuses were absent from the original form of order in January; nor is it suggested that submissions were made in any detail in relation to the terms of the order.

31. After the initial decision was published, there was a brief exchange between the parties over the need for any further changes to the order. The approach taken by the applicants' solicitors was that it was premature to focus on the detail of the order while they were applying for permission to appeal, but that the applicants would have things that they wished to say once their application for permission to appeal had been dealt with. As a result, the applicants had not, until today, fully articulated their concerns about the effect of paragraphs **1(a) and 9** of the order.

32. It is not the intention of a management order under section 24 of the Act to punish a landlord. The policy of the Act is to place the management of the premises in the hands of an independent person, better able than the landlord to manage the property in the interests of all of those with an interest in it. If the effect of the order would be to jeopardise the applicants' interest in the property that would be a matter of legitimate concern to them on which it would be appropriate for them to seek the assistance of the First-tier Tribunal. The appropriate way to do that, in my judgment, is by an application under section 24(9) of the Act, which gives the tribunal power to modify its own order. It is not immediately clear to me what the purpose of the two provisions is, nor why it should be thought appropriate for the landlord's interests to be charged with the borrowings of the manager, or the landlord prevented from disposing of its interest, especially where there is no evidence that the landlord is liable to contribute to the service charge on account of flats which it owns.

33. Whether on a fuller consideration the presence of those terms is necessary, or desirable, or not, I am satisfied that the fuller consideration which is required is not appropriately provided on an appeal to this tribunal. There has previously been insufficient focus by the applicants on the detailed terms of the order, and as a result, the First-tier Tribunal has made this order assuming, no doubt, that the terms were uncontroversial. But that fact does not preclude an application to amend that order on grounds which were not previously relied on. It does not require an appeal to this tribunal, let alone a stay of the management order, for the applicants' position to be sufficiently protected. An application to the tribunal which made the order, and which is responsible for supervising its implementation, is the speedier, cheaper and

more appropriate course.

34. What I am prepared to do, therefore, is to suspend paragraph 1(n) of the order and paragraph 9 of the order for a period of 28 days to enable the applicant to make such application as it may wish to make to the First-tier Tribunal under section 24(9) in order to procure any change which the First-tier Tribunal considers is appropriate. If such an application is made, then the stay will continue until the application is determined. The stay will also continue for as long as both parties are agreed that it should continue, so that if discussions are going on between the parties about any other amendments to the order, it will not be necessary for the applicants to make a premature application to the First-tier Tribunal. If the parties agree to any amendments they should seek the views of the manager before making a joint application to the tribunal under section 29(4) to vary the terms of the order.

35. The other ground on which Mr Bates seeks permission to appeal is (as he puts it) "not this manager". The applicants say that the First-tier Tribunal ought not to have appointed Mr Coates, who was the only candidate to be put forward by either party for the post of manager, not because he was disqualified by experience – the tribunal were satisfied that he had exactly the sort of experience that Canary Riverside requires of a manager – but because he had had previous dealings (which I understand were fourteen years ago) in the management of the Canary Riverside complex, which he did not disclose to the tribunal and which contributed to dissatisfaction amongst the leaseholders at that time over the provision of services.

36. I do not know the details of the allegations made against Mr Coates. I do know that they are historic. They were put to Mr Coates in cross-examination. The First-tier Tribunal had the opportunity to consider his answers and to satisfy itself on the question of whether he was a suitable person to be appointed as manager. In its refusal of permission to appeal yesterday, it specifically recorded that, having considered Mr Coates' evidence, it was satisfied that sufficient time had elapsed since his previous dealings with the estate, and sufficient procedures were in place to ensure that similar circumstances did not re-occur, so that it was satisfied that Mr Coates was suitable for an appointment under section 24. Additionally, in originally refusing permission to appeal, it explained that it did not regard the matters put to Mr Coates in cross-examination as disqualifying him from being appointed as manager.

37. The standard which this tribunal has to apply, is once again, to ask itself whether there is a realistic prospect of it being satisfied at the hearing of an appeal that no reasonable tribunal could have regarded Mr Coates as a suitable person to be appointed as the manager of Canary Riverside. Once again, I am satisfied that there is no prospect of this tribunal making such a determination and I would refuse permission to appeal on that ground also.

38. Finally, the applicants say that the reasons given by the First-tier Tribunal are inadequate: for example, they did not deal with all of the evidence advanced by the leaseholders. I have read the two decisions of the First Tier Tribunal, and its two refusals of permission to appeal. I am satisfied that the applicants well understand why the tribunal made the decisions that it did. It is not necessary for a First-tier Tribunal to deal with all of the evidence which is presented to it, or to deal in minute detail with all of the arguments. This was a case in which, after many years of dissatisfaction with the management of Canary Riverside, and after a five day hearing,

the tribunal was left in no doubt at all that it was appropriate for a manager to be appointed. In my judgment it explained with clarity and fairness to the applicants its reasons for reaching that conclusion. I therefore refuse permission to appeal on that ground also.

39. Had I been satisfied that there was a realistic prospect of success on any of the grounds of appeal advanced by Mr Bates, I would have been inclined to order a stay and to direct that the hearing of the appeal should come on as quickly as possible. It would at the very least have been inconvenient for management to be transferred to Mr Coates only for there to be a prospect of management being removed from him in the event of a successful appeal. In my judgment this would have been an appropriate case for a stay. As it is, I am satisfied that there is no realistic prospect of a successful appeal. There are no grounds on which the tribunal can or should order a stay of the decision of the First-tier Tribunal. As a result, Mr Coates' appointment as manager will take effect at midnight tonight.

40. The decision will have been recorded. If the parties want a transcript, they can apply to the court recording office. I do not propose to ask for a transcript, but I will produce an order.

41. Is there anything else you want me to deal with this afternoon?

MR BATES: I have one very short matter. I appreciate you cannot grant me permission to appeal, but I do ask for a stay of seven days so that I might seek a judicial review, which I think would have to be my remedy –

THE DEPUTY PRESIDENT OF THE TRIBUNAL: Yes.

MR BATES: I do not think I can appeal your stay to the Court of Appeal.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: I do not think you have any route to the Court of Appeal.

MR BATES: No, I think it has to be the High Court.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: Yes. I refuse a stay. I do not thing the Administrative Court would find in this decision something of sufficient general importance to satisfy the cart test for granting permission for judicial review. So I decline to grant a further stay.

MR BATES: I am grateful.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: But you might find someone in the building, if you knock on enough doors, but no stay.

MR BATES: I am grateful.

MISS GOURLAY: Sir, there are two matters. The first is that section 20C order, to the extent that one is necessary in respect of the appeal – or the attempt to appeal – in the hearing before you on behalf of the applicants –

THE DEPUTY PRESIDENT OF THE TRIBUNAL: Has there been a section 20C order in relation to the First-tier Tribunal?

MISS GOURLAY: Regrettably, not yet, sir, no, because, effectively, the parties waited until – well, certainly my clients waited until the decision came out –

THE DEPUTY PRESIDENT OF THE TRIBUNAL: I mean in relation to the proceedings.

MISS GOURLAY: No, there has been no Application Notice –

THE DEPUTY PRESIDENT OF THE TRIBUNAL: There has not been.

MISS GOURLAY: This is a free-standing one in relation to you.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: Right.

MISS GOURLAY: Sir, it was the intention of the applicants to make one before now to the First Tier Tribunal, but plainly time has been taken up with other matters.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: Yes. So that is the first application you want to make?

MISS GOURLAY: That is the first application. The second application is one which I confess is one that I have not made before to the Upper Tribunal, and that is that there be a means of enforcing the tribunal's directions below. As I understand it, under section 25 of the Tribunals, Courts and Enforcement Act, the tribunal does have all the powers of the High Court in terms of enforcing decisions. Your decision is that the manager will take up his occupation, or take up his managership at midnight tonight. As of now, which is now four o'clock on Friday afternoon, so far as I know – I have not been informed otherwise by Mr Coates, Mr Coates does not have any information that the tribunal directed that he should be provided with. Now, what will be said immediately by the landlord is, "Oh, we do not have to provide that until 1st October". That is currently correct. However, there was an earlier direction that they should provide it by 19th September. That was not complied with, and the deadline has been extended further. It is imperative that Mr Coates has some information that he can work with or set his employees possibly to a very late Friday night with in order to take up his position tomorrow. For example, Mr Coates does not know who the contractors are for the machinery and so on at the estate. He has no information about that at all. He has no contact information for the leaseholders, apart from that which he has managed to find out by himself. So, if he is to take up this position which you have now directed that he must, that information must be provided, and, without wishing to go back over the history of this matter, there is a very clear refusal on the part of the respondents or the landlord even just to accept what the First Tier Tribunal directs.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: Section 25 – I do not have it to hand – is that a power to transfer cases to the Upper Tribunal in order for enforcement?

MISS GOURLAY: It is, basically, a provision which grants or confers on the Upper Tribunal all of the powers of the High Court –

THE DEPUTY PRESIDENT OF THE TRIBUNAL: Yes.

MISS GOURLAY: - relating to enforcement in relation to certain matters, and when I get to 25 – those matters are – in fact, I will read it all out, because then I will not miss anything out. "In relation to the matters mentioned in subsection (2), the Upper Tribunal has in England and Wales and Northern Ireland the same powers, rights, privileges and authority as the High Court".

THE DEPUTY PRESIDENT OF THE TRIBUNAL: Yes.

MISS GOURLAY: Subsection (b) deals with Scotland. Subsection (2): "The matters are the attendance and examination of witnesses" – plainly not of relevance here – "(b) the production and inspection of documents" which, arguably, it is the case, because those documents have not been produced – "and (c) all other matters incidental to the Upper Tribunal's functions".

THE DEPUTY PRESIDENT OF THE TRIBUNAL: Yes, but the proceedings are not currently before the Upper Tribunal; they are before the First Tier Tribunal –

MISS GOURLAY: They are, but –

THE DEPUTY PRESIDENT OF THE TRIBUNAL: - and there is provision for transfer –

MISS GOURLAY: Yes.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: - to the Upper Tribunal to enable it to exercise its powers under section 25, I think.

MISS GOURLAY: Yes, the application is before you though today for permission to appeal, and you have upheld the decision of the First Tier Tribunal.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: Yes, but I am not sure that gives me jurisdiction over the First Tier Tribunal. It does not give me the power to enforce the First Tier Tribunal's decisions. It is not a procedure which I have ever encountered being used. They have to ask the Upper Tribunal to transfer –

MISS GOURLAY: In those circumstances there must be agreement between the First Tier Tribunal and the Upper Tribunal to transfer it.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: Yes. So there are procedural restrictions. But, in any event, I would not be minded to make an order at five minutes to four on a Friday afternoon without Mr Bates having been put on notice.

MISS GOURLAY: I accept that, sir. My main concern is simply that – I am sure, as Mr Paul said in answer to cross-examination, everything will be handed over in a professional manner, and therefore, presumably, the documents are on their way to Mr Coates' office.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: I would not presume that. They should be handed over by 1st October.

MISS GOURLAY: Yes.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: Wherever they are. Mr Bates, what do you want to say about section 20C?

MR BATES: I suppose, having been unsuccessful, there is not really a lot I can say. Normally there would not be a 20C issue arising because it would be dealt with on the papers.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: No.

MR BATES: To the extent that we have been accommodated by this tribunal, it has not been because of anything untoward that we were doing –

THE DEPUTY PRESIDENT OF THE TRIBUNAL: No.

MR BATES: - it is simply the shortness of time.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: But the tribunal has, at the request of the parties, been able to fit them in today, and I think that has resulted in additional expenditure over and above what one would normally expect in an application for permission to appeal, which, given the way in which I have dealt with it, would probably have been dealt with without the leaseholders' representations being required to submit observations. So I think it is appropriate in this case that there should be a section 20C order.

MR BATES: I do not necessarily disagree. The only point I would say against that is: the time spent trying to understand what the First Tier Tribunal's order meant and the condition on the compliance is not necessarily something that should fall on my client to pay. I do not want to get into the realms of salami-slicing what will not be a particularly huge sum of money in any event.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: Yes. Well, I think it is an appropriate case for a section 20C order.

MR BATES: I am grateful.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: Mr Bates, can I invite you to draw up a formal order dealing with the matters that are covered, including the stay of the particular paragraphs –

MR BATES: Yes.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: - of the First Tier Tribunal's management order?

MR BATES: Yes.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: And then if you could agree that with Miss Gourlay and let me have it sometime next week.

MR BATES: I anticipate we can get it agreed over the weekend.

MISS GOURLAY: Sir, I am hoping not to work this weekend. But certainly on Monday I

will give it my full attention as soon as I receive order.

MR BATES: It is a short order.

THE DEPUTY PRESIDENT OF THE TRIBUNAL: It will not be terribly complicated. Thank you both very much indeed for your assistance today. I will inform the First-tier Tribunal what has happened, and then if you let me have a copy of the order – the draft order – next week. Thank you very much.

MR BATES: Thank you.
