**FIRST-TIER TRIBUNAL**
**PROPERTY CHAMBER**
**(RESIDENTIAL PROPERTY)**

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| **Case references** | : | **LON/00BG/LVM/2021/0010** |
| **Property** | : | **Canary Riverside Estate, Westferry Circus, London E14 (the "Estate")** |
| **Applicant** | : | **Mr Sol Unsdorfer** |
| **Respondents** | : | **(1) Octagon Overseas Limited ("Octagon")**<br>**(2) Canary Riverside Estate Management Limited("CREM")**<br>**(3) Riverside CREM 3 Limited ("Riverside")**<br>**(4) Circus Apartments Limited ("CAL")**<br>**(5) Leaseholders represented by the Residents Association of Canary Riverside ("RACR")** |

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| **Represented by** | : | **Wallace LLP for Mr Unsdorfer**<br><br>**Freeths LLP for Octagon, CREM, and Riverside**<br><br>**RACR for the leaseholder Applicants**<br><br>**Norton Rose Fulbright LLP for CAL** |
| **Type of application** | : | **Applications to vary the terms of a Management Order** |
| **Tribunal** | : | **(1) Judge Amran Vance**<br>**(2) Judge Nicola Rushton QC** |
| **Venue** | : | **10 Alfred Place, London WC1E 7LR** |
| **Date of directions** | : | **27 July 2022** |

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**DECISION**

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## Description of hearing

These determinations were made under the tribunal's paper case procedure, without an oral hearing. All parties consented to the applications being determined in this manner. A face-to-face hearing was not held because no party requested the same and one was not considered necessary to dispose of the issues in dispute.

## Background

1. This is the tribunal's decision in respect of two consequential matters arising from a decision of the tribunal dated 13 May 2022. That decision concerned an application brought by Mr Unsdorfer, the tribunal-appointed Manager of the Canary Riverside Estate, to vary the existing Management Order made pursuant to s.24 Landlord and Tenant Act 1987. The hearing of that application took place on 27 April 2022, and the background to the application, and details of the relevant legal framework can be found in the tribunal's subsequent decision of 13 May. In this decision, we will refer

to the current version of the Management Order as the Existing Management Order.

2. The two consequential matters are:

   (a) a new application by the Manager brought under s.24(4) LTA 1987 seeking directions from the tribunal. The application is made in letters from his solicitors, Wallace LLP ("Wallace") dated 25 May 2022 and 30 May 2022. The directions sought concern whether, in light of the 13 May decision, the Manager is entitled to recover legal costs from the Commercial Lessees of the Estate in five specific scenarios. The tribunal issued directions in respect of this application on 6 June 2022.

   (b) the determination of an issue that was adjourned at the hearing on 27 April, namely the Manager's application to vary the EMO to ensure that after his appointment as manager ceases, any liability he has in respect of an intended contract with the Greater London Authority and the Ministry of Housing, Communities and Local Government to obtain grant funding ("the Funding Agreement") for the remediation of unsafe cladding on the Estate is passed on to the landlord, or any succeeding manager under that contract, or that he is indemnified for any claim ("the Building Safety Fund Variation"). It was not possible to deal with this part of the Manager's application at the hearing on 27 April, because the Respondents needed time to consider the draft agreement that the Manager was considering entering into, and which had only been provided to them shortly before the hearing. Directions as to the future determination of the issue, without a hearing, were agreed by the parties and approved by the tribunal on 29 April 2022.

**Legal Costs from the Commercial Lessees of the Estate**

3. Paragraph 27 of the Schedule of Functions and Services to the EMO reads as follows:

> "27. The Manager is entitled to be reimbursed in respect of reasonable costs, disbursements and expenses (including, for the avoidance of doubt, the fees of Counsel, solicitors and expert witnesses) of and incidental to any application or proceedings (including these proceedings) whether in the Court or First-tier Tribunal, to enforce the terms of the Leases, the Commercial Leases and/or any Occupational Agreement of the Premises. For the avoidance of doubt, the Manager is directed to use reasonable efforts to recover any such costs etc directly from the party concerned in the first instance and will only be entitled to recover the same as part of the service charges in default of recovery thereof."

4. At the 27 April hearing, Mr Dovar, counsel for the Manager, submitted that paragraph 27 enabled the Manager to recover his legal and professional costs of, and related to, the s.24 applications brought before this tribunal (and, presumably the Upper Tribunal) through the service charge provisions of each lease, including from the Commercial Lessees. Mr Morshead QC, counsel for the Respondent landlords ("the Landlords") contended that the paragraph only enabled the Manager to recover litigation costs of enforcement, such as the recovery of arrears of service charges due to him, He conceded that the words "including these proceedings" in the paragraph meant that a carve out had been made for the costs of the original s.24 application to the tribunal, but argued that the carve out only entitled the Manager to recover such costs from the residential lessees, not the commercial lessees.

5. We did not agree with Mr Dovar's position and at paragraphs 58 – 60 of our decision of 13 May, said as follows:

> "58. In our determination, paragraph 27 allows the Manager to recover his reasonable legal costs incurred in enforcing the terms of the Leases, including the Commercial Leases and/or any Occupational Agreement. It covers both costs incurred in Court proceedings or before this tribunal. As provided for in the paragraph, the Manager must first seek to recover those costs from the defaulting lessee and, if unsuccessful, he may recover them as part of the "service charge". As to what is meant by "service charge" one has to look at the definition of "Service Charges" in paragraph (n) of the interpretation section of the EMO which reads as follows:
>
> > "(n) the Service Charges" means the service charges paid by the residential occupiers; the shared service charges payable in relation to the Shared Services, including the reserve fund collections in relation to both the residential units and the Shared Services, and for the avoidance of doubt includes any services shared with Circus Apartments. It includes utility charges in respect of the Shared Services……"
>
> 59. Incorporated within the definition of Service Charges (as capitalised) are therefore both service charges payable by the residential lessees under their leases, and charges that are payable by the commercial lessees in respect of Shared Services. As set out in paragraph 4(a), the commercial lessees have no obligation to pay service charges to the manager under the EMO, other than in respect of Shared Services. We also note that throughout the EMO there is a distinction made between residential Service Charges and Shared Service

Charges (see for example paragraphs 10 (ii) and (iv) of the EMO)

60. It appears to us that there is a drafting error in paragraph 27, and that the reference to "service charges" should have a capitalised 'S' and capitalised 'C'. In other words, it should have read 'Service Charges'. We recognise that it was the residential lessees who applied for a Manager to be appointed over the Estate, but it would make no sense for the Manager's ability to recover legal costs incurred in enforcing a commercial lessee's obligations regarding Shared Services, to be restricted to recovery from residential lessees only. As such, we determine that paragraph 27 allows for the recovery of legal costs from commercial lessees where:

    (a) the legal costs were incurred in enforcing the terms of the Leases, including the Commercial Leases and/or any Occupational Agreement;

    (b) the costs are of, or incidental to, any application or proceedings whether before a Court or this tribunal. We do not agree that the paragraph accords a carve out solely in respect of the original s.24 application. There is nothing in the wording that excludes the costs of any subsequent application under s.24(9) to vary the EMO;

    (c) the Manager has been unsuccessful in attempts to recover those costs from the defaulting lessee; and

    (d) the enforcement action taken related to the provision of a Shared Service by the Manager."

6. We also rejected the Manager's proposed variation to paragraph (m) of the EMO, to include legal and professional costs arising out of or in connection with his appointment of the Manager, within the definition of Shared Services. In doing so, we said, at paragraphs 62 – 64:

    "62. We are not persuaded that it is appropriate to make the proposed variation. We accept that there is a tangential benefit to the commercial leaseholders in having Mr Unsdorfer in place as Manager, but what this variation seeks to achieve is to make the commercial lessees liable to contribute towards future litigation costs incurred by Mr Unsdorfer in respect of further s.24 proceedings. That appears to us to be disproportionate given that this would concern proceedings over which they would have no control unless they applied to the tribunal to be joined as parties or interested persons.

63. It was the residential tenants who applied for the appointment of a Manager over the Estate. At present, the commercial lessees only have to contribute towards legal costs incurred by Mr Unsdorfer where they concern Shared Services in respect of which they obtain a direct benefit. To make the commercial lessees liable to contribute towards his costs of any, and all, future s.24 proceedings, as Estate costs, would amount to an unjustified widening of their liabilities under the EMO, and an inappropriate encroachment on their rights and obligations.

64. In particular, the commercial lessees do not have the statutory protection accorded to the residential lessees under service charge provisions of the Landlord and Tenant Act 1985, and could not, therefore, seek a determination from this tribunal, or a Court, as to the payability of any legal costs under s.27A of that Act. That puts them at a significant disadvantage, and militates against making the variation sought."

7. In his application for directions the Manager requests confirmation from the tribunal as to whether, given the tribunal's decision of 13 May, he is entitled, pursuant to paragraph 27, to recover his legal costs from the Commercial Lessees in respect of five situations:

   (a) the current litigation between the Manager and various BVI-registered companies that hold residential leases concerning non payment of sums said to be due to the Manager;

   (b) the original s.24 application to appoint a manager;

   (c) the current ongoing applications to extend the term of the management order;

   (d) the recent application that arose out of the insolvency of the Virgin gym located on the Estate [the "Virgin Bad Debt Application"] that was determined in a decision of the tribunal dated 28 April 2021; and

   (e) the ongoing applications to vary the EMO.

8. Written submissions on the application for directions have been received from, Mr Dovar, counsel for the Manager, Mr Bates, counsel for the Landlords, Mr Rainey QC, counsel for CAL, and Ms Jezard on behalf of those leaseholders represented by RACR. Both CAL and RACR support the Manager's position. Mr Rainey contends that the Manager must be able to recover his legal costs from the Commercial Lessees, or else the costs will end up falling on the Manager himself, or being borne by CAL and the other lessees of the flats on the Estate, both of which would be unfair. Ms Jezard states that the Commercial Lessees have been charged a share of the Manager's legal costs as part of their service charge since 2016, and

asserts that legal fees constitute a shared service, that should be recoverable from both commercial and residential leaseholders

9. The tribunal has also received a total of eight objections from Commercial Lessees. Most of those lessees object to having to contribute towards the Manager's legal costs without making substantive comments. Two lessees complain about the service provided by the Manager, but such complaints are outside the scope of this application. One commercial lessee, the Canary Riverside Plaza Hotel asserts that a shared service has to relate to something physical, and that incurring legal fees is not a service that is being provided to the hotel. One residential leaseholder, Mr Zhang, in an email dated 8 June 2022, agreed that fairness required that commercial lessees should contribute towards the Manager's legal costs, and made suggestions as to how the tribunal could limit such expenditure. His suggestions, however, are outside the scope of this application.

10. When he issued his directions of 26 May 2022, following receipt of the letters from Wallace of 25 May 2022 and 30 May 2022, Judge Vance stated that "absent an application for permission to appeal (which enables the tribunal to review its decision) it was inappropriate for the tribunal to expand on, or explain its decision in correspondence." He went on to say that this would not, however, prevent the Manager from applying under s.24(4) of the 1987 Act for directions as to whether or not he is entitled, under paragraph 27 of the EMO, to recover legal costs from commercial lessees in the five examples given at paragraphs a.) to e.) of Wallace's letter of 25 May 2022. Wallace then made an application seeking such directions.

11. Mr Bates' position was that the 13 May decision has been issued and, unless and until, any aspect of it is appealed, it is the totality of the position as regards the issues it covers. This tribunal should not, and cannot, in his submission, change or expand upon its decision in correspondence or by the issuing of directions under s.24(4), Landlord and Tenant Act 1987. His answer to the questions posed by Wallace is that the Manager should simply "read and apply paragraph 60 of the decision of 13 May 2022".

12. We agree with Mr Bates that it would be wrong for the tribunal to change or expand upon its decision of 13 May, and we do not seek to do so in this decision. If this were, say, an application for a determination as to whether a landlord was entitled to recover legal costs from a tenant as service charge under a lease, it would be quite inappropriate for the tribunal to further explain its decision once it had been issued, absent a request for permission to appeal, following which the tribunal is obliged to consider reviewing its decision.

13. However, the s.24 jurisdiction is unusual in that s.24(4) makes specific statutory provision for a manager to apply to the tribunal for directions in respect of *"such matters relating to the exercise by the manager of his functions under the order"* and *"such incidental or ancillary matters as [the FTT] thinks fit"*. The five questions posed by the Manager are all questions relating to the exercise of his functions. He, understandably, wishes to know whether he is entitled to recover his legal costs from the

commercial lessees in the situations described. Mr Unsdorfer has been appointed by this tribunal to manage the Estate under the provisions of s.24 of the 1987 Act. Section 24, as stated by HHJ Huskinson at [31] in *Queensbridge Investments v Lodge* [2016] L&TR 19 is directed towards creating a scheme of management which will ensure that the relevant premises are properly managed. In our view, it is appropriate to address the questions posited in the Manager's application for directions in order to assist him in his performance of his management obligations, so far as we are able to do so without expanding on or explaining our decision of 13 May.

14. However, the parties should note that in doing so we make no determinations regarding any dispute referred to in the questions, nor as to whether or any particular proceedings concern, or do not concern, Shared Services. Those are matters that would need to be addressed on a case by case basis within the particular disputes.

15. Nor do we consider it appropriate to address Mr Rainey's contention regarding unfairness, Ms Jezard's assertion that legal costs should fall within the definition of Shared Services, or the issues raised by the objecting Commercial Lessees. To do so would involve us expanding on, or explaining our decision of 13 May which, as stated above would be inappropriate.

*Question (a) - current litigation between the Manager and the various BVI-registered companies*

16. Unless these costs were incurred in pursuing enforcement action relating to the provision of Shared Services, they would not appear to meet the test at sub-paragraph 60(d) of our decision of 13 May, and, as such, would not be recoverable from Commercial Lessees under paragraph 27 of the EMO.

*Question (b) - the original s.24 application to appoint a manager*

17. As Mr Bates points out, it is not clear whether this is a reference to pre-appointment costs, post-appointment costs or both. In any event, for either pre-appointment, and post-appointment costs to be recoverable, the Manager would need to satisfy the tests at sub-paragraphs (a), (b), and (d) of paragraph 60 in order for them to be recoverable from commercial lessees under paragraph 27. The test at sub-paragraph (c) is automatically met as there is no defaulting lessee from whom such costs could be recovered. Mr Bates suggests that pre-appointment costs cannot be charged to anyone. However, it appears to us that they arguably fall within the scope of paragraph 27 if it can be established they were costs "of and incidental" to the original s.24 application, and the criteria at sub-paragraphs (a), (b), and (d) of paragraph 60 are met.

18. Mr Dovar submits that the Manager's costs of the original s.24 application are "obviously covered", and that costs are recoverable from both residential and Commercial Lessees, because the EMO states so, in plain terms, when it refers at paragraph 27 to 'including these proceedings',

those proceedings being the original s.24 application. We do not agree that the position is as clear cut as Mr Dovar suggests. The hurdles that it appears the Manager would need to overcome are: (i) establishing that the costs were incurred in enforcing the terms of the Leases, the Commercial Leases and/or any Occupational Agreement; and (b) establishing that the costs were incurred in taking enforcement action relating to the provision of a Shared Service. Nor is it entirely clear that the reference in paragraph 27 to "these proceedings" is limited to the original s.24 application, or whether it includes costs incurred in the subsequent applications to vary the management order.

*Question (c) current applications to extend the term of the management order*

19. Again, the Manager would need to satisfy the tests at sub-paragraphs (a), (b), and (d) of paragraph 60 in order for them to be recoverable from commercial lessees under paragraph 27. Once again, the test at sub-paragraph (c) is automatically met as there is no defaulting lessee from whom such costs could be recovered.

*Question (d) the Virgin Bad Debt Application*

20. Mr Bates acknowledges that sub-paragraphs (a) – (c) of paragraph 60 are likely to me met in this case, and we agree. We concur with his submission that it is probable that some of the costs can be charged to both the commercial and residential tenants, but only to the extent that they relate to Shared Services. Any dispute over such extent would need to be determined on the evidence provided by the parties.

*Question (e) the ongoing applications to vary the EMO*

21. As with questions (b) and (c), the Manager would need to satisfy the tests at sub-paragraphs (a), (b), and (d) of paragraph 60 in order for them to be recoverable from commercial lessees under paragraph 27. Again, the test at sub-paragraph (c) is automatically met as there is no defaulting lessee from whom such costs could be recovered. Areas of difficulty for the Manager appear to be demonstrating that sub-paragraph (a) is met, namely that the costs were incurred in enforcing lease terms, and also sub-paragraph (b), as the costs of the variation applications would only be potentially recoverable to the extent that they concern Shared Services.

**The Building Safety Fund variation indemnity**

22. The parties have largely agreed a form of order addressing the indemnity, and have submitted a draft for the tribunal's approval. However, the contents of paragraphs 3, 5 and 8 of the draft have not been agreed and require the tribunal's determination.

23. Before we turn to the disputed matters, it appears to us that the reference to a new manager in paragraph 1 should contain capitalised initial letters

(i.e. "New Manager"), for consistency with the definition in the previous paragraph. We vary the wording accordingly.

*Paragraphs 3 and 5*

24. The first issue is the duration of the indemnity, and whether it should be limited in time. The Manager's position is that there should be no time limit, whereas the Landlords consider the appropriate time limit should be 12 years from practical completion of the works. The Landlords contend that as the funds for any call on the indemnity would ultimately come from the service charge fund it cannot, as a matter of good estate management, be right that the fund is exposed to the risk of payment for the rest of time. There must, they say, come a time when the risk of a call on the funds has passed. They also say that under the current agreed wording, paragraphs 4(a) and 4(b) refer to the expiry of the indemnity period, and an expiration date is therefore already envisaged. They also suggest that an unlimited indemnity would affect the sales of the residential flats. They propose a 12-year "cut-off" date because: (a) they understand that the Funding Agreement will take effect as a deed, so that the normal limitation period for claims under the Funding Agreement would be 12 years; and (b) the Funding Agreement (para.33.7) limits the obligations of the parties to the Termination Date, which is itself defined as the 12th anniversary of the date of Practical Completion.

25. The Manager's position is that the indemnity he has given is not limited in time, so there is no good reason why the indemnity he receives should be, and that the suggested cut off of 12 years, from the date of Practical Completion bears no relation to the exposure the Manager has under the Indemnity, which is in no way linked to Practical Completion.

26. We agree with Mr Dovar that the indemnity he is to give under the Funding Agreement is not limited in time. It is true that paragraph 33.7 states that the obligations of the Parties under the Agreement shall continue until the Termination Date, and that the Termination Date is defined as the 12th anniversary of the date of Practical Completion. However, paragraph 33.7 refers to obligations under the Agreement. It does not refer to the Manager's liabilities which, under the indemnity provisions at paragraph 17 will include liabilities arising under statute, tort, contract and/or at common law in respect of personal injury. As Mr Dovar points out, some claims such as personal injury or construction disputes have extended limitation periods, so a 12-year cut off tied to Practical Completion potentially exposes the Manager to risk after that period has expired.

27. Given that the Manager's indemnity is not limited in time, we see no reason why this should not also be true of the indemnity he is to receive. We recognise that this will mean that the exposure of a claim on the service charge fund is similarly not limited in time. However, that, in our view, is not a reason to impose the cut-off date proposed. Lessees' potential

exposure to calls on a service charge fund are often not subject to a temporal limitation, so long as they remain a lessee, and we see no reason why the situation should be any different in respect of this indemnity. Obviously, as time passes, a call on the indemnity, and subsequent call on the service charge fund, will become increasingly less likely. There is no evidence to support the Landlords' suggestion that an unlimited indemnity would affect the sales of residential flats, and we see no reason to conclude that any such impact would be greater if the indemnity was unlimited, rather than subject to a 12-year cut-off. In any event, given the unlimited nature of the Manager's indemnity, it would not be reasonable or appropriate to impose a 12-year cut off even though to do so would limit the potential service charge exposure of a purchaser of a flat in year 13.

28. The Landlords are, however, correct to say that the current wording of paragraphs 4(a) (and 4(b)) of the Order refer to an expiration date for the indemnity. We suspect that this has arisen because the Manager's suggestion that the indemnity was unlimited was a late proposal, and the potential impact on 4(a) and (b) was overlooked. Paragraph 4 seeks to provide for the situation where Mr Unsdorfer is called upon to repay sums, or to pay sums, but where he is no longer the Manager, and either: a new manager is appointed in his place; or a new management order is made with a new manager; or there ceases to be a management order in place in respect of the Estate. Paragraph 4 states that in any of those scenarios, a New Manager (being a person with management obligations and rights, under the terms of the leases and/or a management order) shall be entitled to recover through the residential service charge any sum paid to Mr Unsdorfer, or on his behalf, in respect of sums clawed back by the DLUHC and/or GLA under the Funding Agreement.

29. Sub-paragraph 4(a) provides for the New Manager to have power to raise, as part of the service charges levied on the relevant leaseholders, a special levy on account of any liability the New Manager might incur under this provision. It also provides that if Mr Unsdorfer makes no call on the indemnity in his favour, then upon the expiry of the indemnity period, the New Manager must take all reasonable steps to return the special levy to the leaseholders (and/or their assignees) who contributed towards it in such sums as they originally paid.

30. Sub-paragraph 4(b) provides that if a claim is made on the indemnity and, upon the satisfaction of that claim, there is a surplus left in the special levy at the end of the indemnity period, then this is to be returned to the leaseholders (and/or their assignees) who contributed towards it in such proportions as reflect their original contributions.

31. It appears to us that, unlike the indemnity set out in paragraph 17, the Clawback provisions of clause 4.4, 4.54, and 9 of the Funding Agreement are all obligations under the agreement that will end on the Termination Date referred to in paragraph 33.7, the namely 12th anniversary of the date of Practical Completion. If that is correct, then it appears appropriate to amend the reference to "upon the expiry of the indemnity period" in sub-paragraph (a), and the reference to "at the end of the indemnity period" in

sub-paragraph (b) to, respectively, "upon the Termination Date", and at the Termination Date", with the Termination Date defined in the recitals to the Order. As the parties have not had the opportunity to comment on this proposal we will accord them the opportunity to make such representations before finalising the draft order and we will determine what amendments should be made to paragraphs 4(a) (and 4(b)), as well as any necessary consequential amendments, by way of an addendum to this decision.

*Paragraphs 3 and 5*

32. Paragraph 3 specifies that the Manager's indemnity is not to extend to costs, damages, monies etc arising from acts of negligence on his part, or where the same arises as a result of any breach of warranty or representation by him. The Manager's proposed wording is that in the event of a dispute, the tribunal is to determine whether or not, by reason of alleged negligence and/or breach of warranty/representation the indemnity is not to apply.

33. The Landlords contend that this is too narrow, and propose the inclusion of the following additional wording to be inserted at paragraph 5, "For the avoidance of doubt, the Tribunal may by further order determine that Mr Unsdorfer is not entitled to rely on the aforementioned indemnity in respect of any particular matter."

34. Mr Bates advanced two reasons for the Landlords' position. Firstly, they consider the provisions of the Order should align with, and mirror, paragraph 11(d) of the conditions of discharge of Mr Unsdorfer's predecessor, Mr Coates. Secondly, the proposed wording of paragraph 3 is limited to negligence, and breach of warranty or representation, and there might be other circumstances where the tribunal would consider it appropriate to prohibit reliance on the indemnity.

35. Mr Dovar, on the other hand, argued that the inclusion of the Landlords' paragraph 5 was inappropriate as its contents widens the limited nature of the exclusion set out in the Manager's proposed paragraph 3. He also contended that the reference to 'any particular matter', was too vague to be of assistance.

36. We agree with Mr Bates' second submission. In our determination the exclusion should not be limited to negligence, breach of warranty/representation, as it is possible that other factual circumstances may arise in future where it is argued that the Manager should not be allowed to rely upon the indemnity, and where the tribunal is called upon to decide whether or not it applies, or if it should be excluded. Mr Bates' example of a failure to follow an aspect of the RICS Residential Service Charge Code which, whilst not negligent, nevertheless causes financial loss is a valid one.

37. We therefore agree to the inclusion of paragraph 5 and insert the following, modified wording at paragraph 3

> "In the event of dispute as to whether or not the indemnity is to apply, or as to the extent of any indemnity (for any reason including but not limited to alleged negligence and/or breach of warranty/representation the provisions of paragraph 5, below, shall apply."

*Paragraph 8*

38. Paragraph 8 contains obligations on the Manager to inform and update third parties of sums received under the Funding Agreement, and how such sums have been, or are to be, expended. There are three areas of disagreement. Firstly, the Landlords say that this information should be disclosed before the Order takes effect or, alternatively, within 28 days of the tribunal's Order. This, says Mr Bates is so that the Landlords and lessees are made aware of the likely scale of the indemnity, which would allow them to make any necessary application to limit or clarify the scope of the indemnity as soon as possible. Mr Dovar's position is that the Manager will provide the information within 21 days after he has actually received the funds.

39. Secondly, the Landlords consider that the Manager should provide quarterly updates to all parties, and to the tribunal, to facilitate greater transparency, whereas the Manager considers six-monthly updates to be sufficient.

40. The third issue is that whilst the Manager is content to provide details of monies received under the Funding Agreement, and monies spent by him, he wishes information regarding future expenditure to be limited to details of expenditure already incurred, whereas the Landlords consider future anticipated costs should also be included.

41. Central to the Landlords' arguments is that given that they, and the leaseholders, are ultimately paying for these sums via the service charge, there is an obligation on the Manager to provide full details of sums received, expended, and likely to be expended in future.

42. Mr Dovar, however, argued that it was inappropriate for the Manager to have to provide details of anticipated future costs, as this may include estimated sums in respect of which no application may ever actually be made to the GLA for funding. Such sums would be irrelevant to the question of his indemnity and may lead to confusion as to what is being claimed and received under the Funding Agreement.

43. On the first issue, we agree with Mr Dovar that the information should be provided within 21 days after he has received the funds. For him to have to provide this information in advance of receipt of funds would be onerous and we are not persuaded that it would serve any useful purpose given that the success of the application is not guaranteed, and given that his indemnity will only start to apply after he receives the funds.

44. As to the frequency of updates we consider that six-monthly updates to the parties to be an appropriate reporting period. Again, for him to have to do so every three months would be onerous and there is nothing to prevent the Landlords making enquires of him in between his reports. There is no need to update the tribunal at the same time, although the Manager should include an update in his periodic report to the tribunal regarding his performance under the EMO.

45. On the third issue, in our determination it is appropriate for the Manager to provide the lessees and the Landlords with details of anticipated future costs so that they are aware of how he intends utilising funds received. We appreciate the possibility for confusion if he does not subsequently apply for funding to meet that anticipated expenditure, but this appears to us to be a presentational issue. If the Manager is clear, when providing information, between what is being claimed, and what has been received under the Funding Agreement, then the scope for confusion should be minimised. On balance, the fact that any call on the indemnity would be met by the Landlords, and the leaseholders, via the service charge, weighs in favour of the provision of information regarding anticipated expenditure.

**Name: Amran Vance** **Date: 27 July 2022**

## RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.