

CANARY RIVERSIDE ESTATE

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Overview

1.1 This is a report to the FTT on the operational matters of the management process for the Canary Riverside Estate shared services. This report outlines the position from directions received 12 August 2016 which contained the condition to collect 50% of the service charge budget for the October period for 70% of the applicants. The logical interpretation of this condition is still being vigorously objected to as an alternative view of the meaning on that condition is suggested to be that the amount collected should be based on the overall annual budget for the estate not each unit's due proportion.

1.2 The approach taken by the landlord and others identified below is to object to the appointment through extensive legal activity, from actions immediately prior to my appointment through to the most recent High Court action by Marathon Estates, which relates to their lost contract and involves allegations of fraud against me. As I understand it, it is said that in relation to the condition contained in the Tribunal's decision of the 5 August 2016 I misrepresented to the Tribunal the amount collected from the lessees and from whom I had collected it, and that it is only on that flawed information that the Tribunal appointed me.

1.3 My overall sense is that since October I have operated under siege within an atmosphere of intimidation. I have been attacked either directly by the landlord or through others nominated by it, on a variety of issues. In the early days of October I managed with an absence of information and erroneous data despite Mr Paul's evidence to the Tribunal in May 2016 that he would act professionally to hand over documents if I were appointed. I have coped since with CREM's determination to restrict my access to parts of the site available to all other previous managers. The task of management has been difficult.

1.4 I have a concern that this situation is likely to impact the service charge as it is accumulating large costs in legal fees. The operational progress is slower as my time is universally spent in preparing and defending legal actions. The introduction of Duncan Rendell as liaison between CREM and me has not created a great turning point of cooperation and success in the handover because much of what is needed is not within his control or ability to obtain from his client. It is interesting that despite the reasons for Louise Berwin requiring Duncan Rendell to be in place she has recently taken to be directly involved again with complaints. Ms Berwin drew to my attention allegations of irregularities relating to Car Parking, and also inappropriate liaisons between staff which I investigated.

1.5 The landlord being on site and not cooperating makes the management task harder. It is essential that greater clarity as to the detail of the role and the defined levels of authority are resolved quickly. The site can be managed by two managers, one dealing with the shared services and another dealing with the asset management of the commercial units, but there must be cooperation. The landlord having free and unrestricted access to the site clearly has the ability to interfere or undermine the management process at any point.

2. The early days in October 2016

2.1 On Saturday 1 October, Louise Berwin and I spoke to endeavour to solve the breakdown in communication. Sadly that did not result in the successful and cooperative handover I had hoped for. I obtained an interim injunction to enforce certain parts of the Tribunal's order in the county court in Central London on the 4 October 2016. That injunction was continued on the 7 October 2016. CREM appealed the injunction, and we currently awaiting a decision on the appeal.

2.2 Even after the interim injunction hearing, information was not forthcoming from CREM, and my communications with Ms Berwin quickly developed into email correspondence where little was progressed. I spent a great deal of time trying to help her understand what was required with the data transfer and trying to set some achievable operational goals. Ms Berwin seemed not quite to grasp the basis of the Receiver Manager role and insisted that I worked for the landlord and reported every action to her as if I simply had replaced Marathon Estates.

2.3 Clearly that was not going to work well. Then, in December 2016, CREM, Octagon Overseas Ltd, Tower Quay Ltd, Marathon Estates Ltd and Westminster Management Services Ltd applied to the High Court for an injunction to allow them to use the lifts serving the residential buildings from the car park. Amongst other things they also complained of a leak that, they alleged, was unattended to. We negotiated a consent order which provided that I would report to Duncan Rendell of Rendell & Rittner each week and meet each month. Mr Rendell was appointed to act in Ms Berwin's place and oversee the management process from the landlords' perspective. Rendell and Rittner are appointed as they act for the landlord as a manager appointed commercially for another site in Docklands.

2.4 Mr Rendell's appointment has made no difference and has simply increased my workload without any useful outcome. Most of the issues Duncan Rendell investigates are subsequently closed without a suitable outcome, or in some cases he advises the matter is dealt with by the legal team of CREM. It is in my view an unnecessary use of my management time as there is no conciliatory or beneficial approach to seek resolutions being made.

3. Documentation

3.1 The management order required documentation, historical and current, leases and licences, a full accounting reconciliation and all monies held to be transferred to me, as receiver manager, by the 1 October. It was not.

3.2 I received over the period of a few weeks into October 23 boxes of paperwork, which was mostly loose and jumbled paper in no structured order and without a schedule or list of the contents of each box.

3.3 This paper filing was followed up by a Dropbox of which the access was controlled by the property manager at Marathon Estates without a sensible documented index.

3.4 What was in the paper and/or electrical files were mainly incomplete documents or some in part redacted. Large parts of the operational detail were simply ignored as there were no list of contracts nor details of ongoing operational matters and it took several weeks to achieve the most basic of TUPE data for the staff. The contracts that were provided were appended to the bundles that were previously used in applications to the Tribunal, such that we needed to go through each bundle, which had no index. For each piece of information it was a time consuming journey of discovery.

3.5 New documents arrived every few weeks from a variety of sources but even now we just do not know what we are missing. We are still discovering new missing documents as more issues unravel. Where we knew what we needed we have requested that information but almost nothing has been generated. Marathon Estates have refused to provide any more information as they say that they are holding the paperwork as lien against unpaid bills. There were no records of any unpaid bills in the information provided on handover.

3.6 It has been repeatedly denied that there was a poor handover, but at no time has any one presented us with any duplicate schedules of contents of any boxes manual or electronic to prove their point.

4 Initial handover of keys and access to retained areas

4.1 The management order clearly stated that CREM was to hand over all the keys to the site. This was not fulfilled. I received a limited number of keys and many of those were then restricted in use and that process overall was made tortuous and fractious.

4.2 The landlord has defined many common areas as retained areas and granted to third parties occupational leases and licences over swathes of the service areas that in normal conditions would be common parts.

4.3 The result is that we simply do not have access to critical parts of the building which add risk by having:

- 4.1.1 Restricted access to the areas where there is electrical plant and controls
- 4.1.2 Restricted access to areas where there is engineering equipment
- 4.1.3 Restricted access to areas where there is electrical equipment
- 4.1.4 No access to the common storage for the building plans
- 4.1.5 Access has been removed from staff welfare areas toilet's and operational rooms
- 4.1.6 No access to stored equipment
- 4.1.7 Restricted access to building control equipment

This is an operational obstruction and is a growing health and safety risk.

We need the office that Wates was removed from. The new office that they have been moved to is in a ventilation room is not suitable. Wates are the essential mechanical maintenance company. They must have a local office base, just as they have had since the inception of the site, for the benefit of the site.

It is critical that I and therefore the site operational staff have unfettered access to:

- the loading bay office
- all staff welfare facilities
- staff toilets, and
- the staff parking facilities.

We also require temporary parking facilitated for site contractors and suppliers.

Although I now have access but not control of the security office I am being pressured to engage in taking a licence at an annual licence fee.

I have been barred and removed from the office facilities enjoyed by all previous managers of the estate, even though the costs of these offices were charged to the service charge account.

4.4 With some areas, even though we may be permitted a key, we have no use or control because of the landlord's restriction on access to what it describes as "retained parts". It is my view that the areas now licenced to third parties were part of the servicing provisions of the building. The cupboards of various sizes that housed plant and equipment were simply areas that were screened off for aesthetic purposes. The Estate Office was designed to be the base for the high levels of concierge services promised in luxury serviced building. It is my view as an experienced property manager that segmenting off sections of common areas as retained space is simply a misuse of the common areas as defined within the leases.

4.5 Since day one we have had continued unfruitful correspondence about the white and blue access cards. This correspondence both in letters and evidence through statements into court has been aggressive and repetitive. CREM's legal advisers have insisted that we were presented with a box of blue operational access cards. We have a picture of the box. The box contained one blue card and all the old decommissioned white cards that were replaced by the blue cards.

5 The consequences of limited access

5.1 The restrictions on access to parts of the building mean that we are often unable to trace the switches and control for many lights, resulting in many bulbs not being replaced when they malfunction.

Security

5.2 The control system to the garden gate adjacent the Virgin Gym is located within the Battery Club. We have had huge problems gaining access to that control system, with the result that this gate is open all the time, destroying the security of the site overall. Contractors have told us that the equipment has no power, and that the landlord has disconnected the power supply, but that has been denied. We have no access to the area where the power control is situated, so we can do nothing about it.

5.3 These issues will in time create greater Health and Safety risks and in my view this whole approach is obstructing the path of management.

Welfare facilities for staff

5.4 There is no staff welfare space for changing, washing and management purposes of administration further training, communication or discipline matters.

The High Voltage plant room

5.5 We have only recently been provided a key to double doors leading to an HV plant room. Duncan Rendell informs us the keys have only just been found. We know that Nick Parojcic accessed this room with UKPN6 January 2017 some weeks before the key was provided to us on 27 January,, without our permission or knowledge. Following access I arranged a report and this report has highlighted an urgent need to carry out repairs to water damaged electrical equipment. Interestingly CREM's electrical report, dated 10 January 2017, makes no mention of the poor state of the electrical installations.

6. Old Estate offices

6.1 Marathon Estates operated out of a rear ground floor section of Eaton House which previously comprised store rooms and a staff meeting room when the site was originally opened. The original estate office is now occupied by Tower Lettings Ltd, which is a stand-alone commercial venture. It is

not connected to the management of the building and should not have a license for internal parts of the Residential building.

6.2 The Eaton House office has now been transferred to Tower Lettings. Marathon Estates has disappeared from Canary Riverside after losing the management of West India Quay, which was also managed by them from Canary Riverside. There is no continuous management need for that office now. Therefore this very large site has no management base from which to operate, contrary to the original sales offering.

6.3 The office still retains the chiller building management system ("BMS"). It is retained on the MEL computer network. Contrary to the engineers' statements, I have been advised by Duncan Rendell that we can operate all the facilities from two ipads but in any event the main control system can still override this operation. It is also stated that during their previous employment two members of the staff have been trained on the chiller BMS, but I have not seen any training records and the two members of staff state they are not proficient in the system. We require either full and unfettered access to the main control system so that we can be trained and manage the system, or a transfer of the main control system to a new location.

7 PortaKabin Application

7.1 Without suitable staff office and welfare facilities, critical to the management of the site. I have put together a proposal to install a two storey PortaKabin, to be located in the lower garden adjacent to the Virgin Active tennis court. This is a discreet and suitable location to provide the absolutely necessary and minimum staff welfare facilities for the development. Please see attachment for the detail.

8 Legal pressures

8.1 The legal pressure started as soon as the decision was published.

8.2 I received 20 letters from Trowers & Hamlin acting for Octagon and CREM prior to 1 October, and before I retained Downs solicitors LLP ("Downs") to act for me, a further 7 arrived until the 28 October. The letters contained continuous demands and threats.

8.3 From early October, after I had obtained an interim injunction in the county court at Central London, Downs received almost daily letters from Mr David Marsden of Trowers and Hamlin. More than 30 arrived each month, challenging the minutiae of every aspect of the management process.

8.4 That volume of letters absorb time and energy, so the landlords' actions ensure that our time is absorbed by the continual legal action. In addition to the FTT, there are County Court and High Court injunctions, all of which impact the costs that will in turn be charged to the service charge account. To date, Mr Marsden of Trowers and Hamlin acts for Octagon Overseas, CREM, Marathon Estates, Tower Lettings, Westminster Management Services and Louise Berwin in claims against me.

8.5 I am of the view that this is a practice applied to grind down the Receiver Manager in the duties. This in my experience would be unusual especially with such wide-ranging actions from appeal of the FTT's original order through to allegations of fraud in a pre-action disclosure application, and a disability discrimination claim. This type and degree of legal attack was not expected within the costs that I submitted for the role. It does mean I have had to expand the team within HML to cope, and this style of behaviour takes its toll on all involved.

8.6 The list below outlines the main legal actions from the application to appoint a manager that are currently being addressed. In addition to these cases Trowers and Hamlin also have placed me on

notice they will join me in to the anticipated legal action from Canary Wharf Management Ltd to recover the unpaid commercial levy made exclusively to the commercial units and not collected through the services charges and discharged from the service charge which I believe to be a mis-use of service charge funds. Likewise they have advised me through Downs that I should be placed on notice of a £40m claim against me in relation to the calling in of the loan if I am to deal with the building insurance. That notification seems to me to be yet another attempt to intimidate me.

8.7 The application for the Judicial Review of the FTT's decision to appoint me has been refused.

	Actions and Venue	Claimant/Applicant	Defendant/Respondent	Claim No.	Claim Application filed
	FTT				
1	Application to appoint Manager	Lessees	Octagon & CREM	2015/0012	
2	Application to vary MO	Coates	Octagon & CREM	2016/0023	18-Nov-16
3	Application to Vary MO	Octagon & CREM	Lessees Coates as Interested Party	2016/0020	27-Oct-16
4	Application for Dispensation	Coates	Octagon & CREM	2016/0141	07-Dec-16
	County Court at Central London				
5	Injunction Claim to enforce the FTT's order	Coates	Octagon & CREM	C02CL596	04-Oct-16
5.1	Application to vary the injunction	Octagon & CREM	Coates	C02CL596	05-Oct-16
5.2	Application to vary the injunction	Octagon & CREM	Coates	C02CL596	26-Oct-16
6	Counterclaim	Octagon & CREM	Coates	C02CL596	25-Nov-16
	High Court				
7	Injunction	Octagon & CREM	Coates	HC-2016-003561	13-Dec-16
8	For permission to claim judicial review of the manager's appointment	Octagon & CREM		CO/54031/2016	25-Oct-16
9	Appeal against the interim injunction obtained in the county court	Octagon & CREM	Coates	CH-2016-000257 & 000258	25-Oct-16

10	Application for pre-action disclosure	Marathon Estates Ltd	Coates	HC-2017-000422	13-Feb-17
11	Disability Discrimination Act Claim	Louise Berwin	Coates	D00CL543	24-Feb-17

9. Communications from CREM

9.1 CREM issue newsletters from time to time to the residents but they do not seem to grasp the concept of the management order as they advised that within the November letter to all leaseholders. CREM also state that they had sent all documents to HML, a statement we know is simply untrue. They also add they have produced the reconciled statement, again not true.

9.2 On electricity they say they have passed all the information, although define that to the contract, it is disingenuous.

9.3 In February they wrote again to all leaseholders, suggesting that they want mediation.

9.4 Regarding the electricity they say the Haven cancelled the supply contract for power, Haven did not. They say that Haven were 40% under market rates they were not.

9.5 The water softer has been repaired, they say it has not, this is complete misinformation.

9.6 They indicate Mr Rendell now has a lesser role, but I don't quite know what he has done to be helpful but I thank him for the time he spent for CREM.

9.7 In these letters are not helpful or indeed incorrect and are only serve to be misleading and in my view obstructive to the management process.

Attached CREM letters.

10. Building & Service Issues on take over

Access and security

10.1 When we took over on the 1 October we discovered that the door entry equipment and the separate system of access control had completely broken down and were not functioning. After considerable research and examination we had to conclude that the failures were sabotage because cables had been disconnected, power fuses in various locations on the premises had been removed and power cables crossed over.

The chillers

10.2 The specification for the chillers does not seem to set them up in an economical way. We believe that the chillers run at a fixed temperature not being on ambient temperature meaning electrical consumption is far higher than necessary. It also appears that none of the chiller units produce a regular consistent electrical meter reading output despite the commissioning being completed and all monies paid just prior to our management responsibility. We are unable to trust the accuracy of the data.

Embedded management companies

10.3 Overall with Canary Riverside historically a great deal of work was carried out by Technic Styling and its successor company, Artcloud Ltd. They appear to be property management or facility management companies embedded within the management process in addition to Marathon Estates, dealing with all routine matters, including the door entry and access control systems.

10.4 We understand Artcloud's brief was to provide the technical and practical support to Marathon Estates, to inspect every task, and then arrange for a works order to be provided so they managed the whole repair and service functions required. On many occasions Artcloud representatives acted as property managers to assess works, and in doing so charged for their time.

10.5 Artcloud Ltd carried out such a variety of tasks, with complete delegated responsibility, from building services to mechanical services, from small to large tasks. They also sub contracted the labour. From the financial reports we think (as we do not have copy of all the invoices) that over the 13 month period to September 2016, they were paid over £750,000 for works. They disappeared from site on the 3 October after their last task, which was the changing of all the locks to the common areas which are described by CREM as retained areas.

Waste management

10.6 Artcloud Ltd also managed the general residential and commercial waste from the site despite not having a waste licence so far as I have been able to establish. Within that contract of managing the waste Artcloud Ltd appeared to rent a Gator, a cart used to move rubbish bins around the site. to CREM. Yet on handover Artcloud Ltd claimed that the Gator, which was registered to CREM as keeper, was not paid for and removed it from site. They also removed a trailer and a Euro Vac required for the rubbish and cleaning processes. As far as I am aware those items were purchased using service charge funds: there are no rental invoices. The removal of the Gator meant that direct individual bin collection was required as transportation of bins was no longer possible.

10.7 The waste contract was sub contracted to Bywaters who had previously managed the direct contract at Canary Riverside quite successfully and at a lower cost for many years. However, due to under-investment by Artcloud the equipment of compactors was so old and unreliable that when Artcloud were removed from site, the compactors ceased to function. With the removal of the Gator, the trailer and the Euro Vac, equipment there was no method of picking up the rubbish around the site and the whole system of rubbish collection collapsed.

10.8 Without an effective refuse collection process on the 1 October we had to urgently source a new licenced firm to carry out the complex and compliant rubbish collection task. This required sourcing specialist vehicles and equipment to rent and having new bespoke compactors made for the site. The latter is a task that took months to achieve. The process involved obtaining quotes for the contract which required knowledge of volumes and frequencies, all of which was absent from the documentation handed over to us. However, with a great deal of help from Canary Wharf Management Ltd who made the personal and business contacts they had work for us and we coped with the problems for the 3-4 months the newly made compactors took to arrive.

10.9 Within the first few months, with a small amount of re-organisation of and removal of many obsolete units from the security office, we did manage to create enough space to install a small desk where we can carry out most of the essential administration tasks for the site, although there is no private area to meet with staff to manage them or listen to their concerns. With the removal of the staff facilities we are now operating without sufficient welfare and first aid facilities.

11. Site Concierge and security office BT phone lines

11.1 The five telephone lines leading into the Concierge desks and security office have been deactivated) due to the non-payment of BT invoices due to the poor handover and information processes.

11.2 On 15 December 2016 Duncan Rendell advised that six phone lines had been transferred to a separate account in the name of HML Andertons. It transpires one of those six lines relates to the staff breakout room to which I have been denied access. On 18 February 2017 Duncan Rendell sent over invoices for those lines in the name of Canary Riverside Management C/o JSS Property management which BT not allow the change allow the change the name. We are concerned there will be VAT implications and need those bills in the correct names.

11.3 We have tried to set up new contracts with BT, but until the historic invoices were paid BT will not set up new contracts. The major issue was with dealing with BT was that there was a lack of cooperation and it was impossible to reach the right staff most days of the week and discussions proved to take an enormous time which then simply ran out. They will also not willing amend the bills into the name of Alan Coates nor HML Andertons. However, when seeking help Duncan Rendell advised this matter is closed and so we sit in limbo. On 15th March 2017, the security line was deactivated. We have now had to order new lines which will be in place on the 23rd March to address this problem, but it represents another example of a complete lack of cooperation or a professional transfer of management facilities, despite Duncan Rendell's direct involvement.

12 Scope of shared services

12.1 The order specifies that the receiver manager is to manage the shared services but, despite endeavouring to establish the scope of the services by negotiation, I have received no assistance.

12.2 Therefore in order to find a practical solution I have operated from the items within the budget that are clearly not specific to the commercial units. However, within the mechanical and electrical services the contract to maintain the plant does not seem to divide in accordance with the actual position. For example, I am advised by Wates that the water softener provides boosted softened water to the Hotel and Virgin Club only. However, the maintenance of the water softener is within the shared service contract* even though it is a service provided only to commercial lessees.

12.3 In October and November CREM demanded, with threats of legal action if I did not, that I deal with water softener repairs, despite the water softener being a uniquely commercial service. This repair has been completed but due to complex technical matters, readings were fluctuating and the performance questioned by the hotel users. From what we can glean the water softener has been the subject of many problems in the past and needs investment and upgrading. Now we have dealt with the matter CREM do not seem to want to take over the repairs. I have the impression that they would rather berate me, the shared service manager, [and demand that I carry out the investment and upgrading,] despite not handing over any service charge monies to enable me to do so.

12.4 Fresh Start Ltd, the dry cleaner, advised that their equipment was being damaged by our inability to maintain the water softener, and also threatened legal action for damages. The Tribunal will remember that Mr Ramadan Bessim, the director of Fresh Start Ltd, was to give evidence on behalf of the landlord at the hearing in May 2016, but withdrew. The Tribunal was not asked to place any weight on his evidence.

We investigated the allegations made by Fresh Start Ltd, and discovered that they do not have a cold water softener provision. It is still rather unclear if they believe this statement because they

continue to berate us for non-performance, although they have recently become less vocal about the water softener and more concerned about our insistence that they remove the unmetered electrical sockets that they draw power from.

13. Service charge finance

13.1 I have highlighted the lack of financial information within the application for amendment of the order by attaching the summary as Appendix.

13.2 On 10th October 2016 We received money totalling some £675,000.00, all described as "residential reserve". We did not receive any monies for the service charge or the commercial reserve held for shared services. Indeed, there appears to have been a spending spree, with Marathon Estates expenditure lists appearing to show they have spent some £3.3 million in six months prior to the 1st October. We were also handed over hundreds of thousands of pounds' worth of unpaid bills, many from Artcloud Ltd, some of which referred to estimates or other documentation, which were not provided.

13.3 We are currently handicapped financially by the lack of money available especially as Marathon Estates billed each leaseholder for the October half year service charges but has amalgamated that money within the overall service charge pot which itself appears to have been overspent. This means that the money that leaseholders thought was to be used for the period from the 1 October 2016 it does appear that it has been used to pay historical past years costs.

13.4 There is a lack of proper information in general accounting terms. We have been provided with two sets of closing positions, one of which as at the 30 September and the second as at the 10 October. Without general ledgers, or full documented information, the differences between the two closing positions make no sense at all. Therefore we are operating only on the reserves that have been given to us plus the current monies that have been paid by the vast majority of the residential lessees and the small minority of the commercial lessees, however our operational running costs appear for the moment to be lower than that we would have expected.

13.5 We have provided a list of all the accounting data we require but it simply has been ignored since 28 October 2016, leading to our attempt to be as clear as possible in January 2017, without any response.

13.6 We are due at least £239,193.74, being made up of the Bank balance of £114,401.93, the Car Park Reserve fund, Commercial service charge of £44,315.60, the Commercial unit's reserve fund of £11,080.53, and the Estate reserve fund commercial of £69,395.68. These sums are clearly stated in the records produced and have not been paid over to me.

14 Residents Association

14.1 The applicants as an association have been constructive, and now that the Residents' Association of Canary Riverside (the "RA") has been formally recognised under the Landlord and Tenant Act 1985, the communication channels are simpler. We have kept the RA at arm's length in relation to decision-making, but it has given us help, made our task easier, and reduced some detective work where little has come from CREM. In my view a collaborative dialogue with all parties is vital for the successful running of any development, but I have, and continue to be accused of working in conspiracy with the RA by the landlord and its agents, as the Tribunal will again remember from the evidence of Mr Curtis on 2 March 2017.

14.2 The joint nature of the ongoing legal actions made the decision to use the same counsel financially sensible. However, as Receiver Manager I am careful to ensure that we do adhere to strict information sharing protocols and I ensure that the relevant discussions are not shared.

14.3 Working with some of the group dealing with thoughts on the future staffing and projects has been helpful, but it is clear we need more time to spend with all stakeholders to review the needs of the site. That is a task that is made much harder by the time taken up with the legal matters. Not having an office on site, and not being able to base staff locally means that we are at a disadvantage compared to CREM who are based on the development through Westminster Management Services Ltd, and wander through the site at will. The level of on-site communication we can undertake due to the time pressures is just is not enough to be ahead of the game in many matters.

14.4 To date we have held one meeting with residents. It was fruitful and enlightening to engage with the wider association. Without any office on site these meetings are awkward to arrange and cannot be spontaneous.

14.5 As a result of the High Court action and in order to try to work constructively with CREM, I have agreed to submit a weekly report and to meet monthly with Duncan Rendell. That has led to the RA and other residents now questioning my independence. The reality is that the time spent on the report and these meetings when we don't have that local office does not sit within the fee structure as such matters are highly time consuming especially when we are still fighting more legal actions every day.

15 Progress with the operational matters

Security and safety

15.1 With little data provided on operational contracts the initial task was to establish that the services essential to the safety of the operation of the estate were functioning. Once we had established that the door entry system had been sabotaged, the first task was to ensure that repairs to that system were put in place to remove the expensive extra security personnel put in place by Marathon Estates.

Mechanical and electrical

15.2 An important and urgent task in October was to ensure that the mechanical and electrical services with the fire alarm systems were functioning.

15.3 Wates personnel, who had been moved from their office, and were by then working from a ventilation room and in their car, worked with us to ensure compliance, but continually failing lightbulbs all around the site presented a resource problem that we struggled with. Without an operational office and access to many areas the whole process took much longer than would normally be required. Many of the recently installed car park light fittings have no warranty and still continue to fail. Where access is not available to the switch gear as this is behind the locked doors sectioned off as retain areas they are not yet replaced.

15.4 We have renegotiated the Wates' contact to extend their services to all mechanical and electrical services, and agreed suitable management additions for subcontracted tasks that interface with part of the overall service such as management of the emergency lighting equipment. In order to manage the holistic services Wates will now run the chiller maintenance through Trane and link into the electrical services management.

Electricity

15.5 In time the Energy Controls electrical metering contract will link into the Wates contract to ensure that all electrical outtakes are metered and the relevant mechanical and electrical plant management is housed within one responsible manager's remit.

Fire alarm system

15.6 The fire alarm system provided by ADT is not open source and is at the end of the design life. It is obsolete and should a part now fail, sourcing replacements will be extremely problematic. Whilst the malfunctions experienced on take-over of the management have been rectified it is essential that the system is replaced as soon as possible.

Avoiding subcontractors

15.7 We are using mainly new contractors and suppliers, and have renegotiated rates and output performances from some contractors. We are not employing Artcloud Ltd, which has resulted in one major saving. We will, where possible, instruct each contractor directly and avoid unnecessary use of firms who simply sub contract all their work at additional cost.

Window repairs

15.8 The window repairs carried out by M Price are unfinished. In some cases the work has not been carried out properly, and so no further progress with M Price is likely. We have not found any overall specification or detailed report for the proposed work or the work as completed.

Window cleaning

15.9 Moving onwards it is important to clean the windows and we have negotiated a new contract. We have also dealt with a range of the small contracts for drinking water supply, electrical supply, pest control and communicating radios. We hope to receive new uniforms shortly and to progress generally the finer details of block management.

16 Wayleave

We have spent weeks trying to resolve a wayleave from SKY's agents, Love Digital, to upgrade to Sky Q at almost no cost, but the processes put in place by CREM have so far frustrated our actions. Duncan Rendell could not deal with the matter, and it is now back with the CREM legal team. It is a simple wayleave and with no real cost impact a competent manager would affect a win in a couple of hours. The risk is that these heavily discounted offers have a short availability and may be withdrawn. Without this product the premium position of Canary Riverside will slip.

17 Assignments

We have a complex problem with assignments that leaseholders expect the management to deal with the pre-sales process through to the registration, but CREM contends that I am not permitted to do that under the current restrictions.

18 Consents

Again CREM disputes I have the right to grant consent for alterations where appropriate. CREM wishes to retain control.

19 Future Budget into 2017/18

19.1 The structural matters of the management order need to be resolved in order to move into a new financial year with some confidence, as cash flow by collecting service charges can only be

achieved with confidence in the legal process. With the landlord and associated companies having such a large contribution to the service charges cash flow may be at risk given their ongoing non co-operation. Also with the utilities being unresolved this has a funding requirement that previously sat outside the service charge budget but within the appointment and will need to be addressed within the service charge budget as there is no other funding stream.

19.2 I have resisted calling for the extra funds, although the order allows, as I believe that would not be seen as a positive step by most leaseholders and long term cash flow would be jeopardised.

19.3 The 2017/18 budget was issued on 14/15 March 2017 and having so little reliable historical or financial data, we do not have all the information required to show real operational savings. However, it has been presented in a far more complete and open way and includes a reserve fund projection. The increase in budget will not mean the savings will not be made, as with each contract negotiated and each reactive cost incurred we drive best value and in most cases the costs have been reduced. Even so, we are mindful that there is a balance between service provision and costs and within Canary Riverside we need to ensure the higher level of service. That is not achieved by the cheapest price for each subject.

19.4 In addition to the enforced change in the way I deal with the utilities, I did not receive any insurance premium information until 13 March. Insurance is the largest single cost to the service charge. The allocations of premiums for each different sector and tenure across the service charge headings are likely to change, but I was unable to make such changes and for budgeting purposes.

19.5 The 2017/18 budget includes a substantial sum for legal charges and reflect large increases in the electrical charges as the chillers are now functioning and will consume large amounts of power.

19.6 The documentation submitted shows the budgeted sums in a similar format to the accounting but breaks out the numbers to show the overall estate operating costs. The drive is to expand transparency on costs, with the service charge showing the routine costs and the exceptional costs through the reserve fund. This will stabilise the service charges and with a well-constructed reserve we will move towards a stable and sustainable service charge fund. The initial risk of the large number of legacy items and the associated costs will need careful management in the 2017/18 financial year, as will a gradual improvement in cash flow.

Appendix Budget and associated documents

20. Reserve fund

20.1 The past approach to the reserve fund is extraordinary as, not only has the JLL plan not been shared, that plan was not extrapolated to the structures applied to the service charge contained within the leases. The plan was not combined with any opinion as to process or costs of the incumbent engineers and does not appear to have listed any project identification year by year.

20.2 Therefore, although there are numbers attached to a variety of specific tasks, those numbers have not been translated from the layout of a surveyor to that required by a property manager to set the annual financial requirement to satisfy the tasks highlighted through the service charge fund. The work to produce the detail of the tasks for each year's projects and how they would be segmented is that of the property manager and was not produced by Marathon Estates Ltd.

20.3 There is clearly a back log of projects, from aesthetic maintenance to essential High Voltage electrical equipment replacement. With the apparent overspend in the first 6 months of the 2016/7 year the balance that can be brought forward into 2017/18 year is probably zero. Therefore the fund

must be re-established with two opposing principles to address simultaneously being the reasonableness of the charge and the need to carry out large amounts of essential and expensive works in quick succession.

20.4 To move forward, based on a breakdown of the JLL report and with the assistance of Wates, a short term assessment of the future needs has been carried out. This simple summary report is attached to the service charge budget for the 2017/18 year and during the years the numbers will be redefined as we gain greater knowledge of the site overall. The assessment will be reviewed annually and once greater cost analysis can be achieved we can start to look at how we can build up a fund for the less obvious tasks such as the lifts which have simply been excluded from any costs profiles.

21 Insurance

The decision as to insurance is well documented but the issue from the costs perspective is the 50% commission that was collected by Reich. When was investigating insurers in January, I was told by Mr Sproulle, as Mr Taylor informed the FTT at the hearing on 2 March 2017 that their fee was £50,000. Within my email confirming the detail of my discussions with Mr Sproulle, I explored if other commissions were paid elsewhere and there was no statement that there were other than an acceptance that only £50,000 was held back from the insurance company who held the remainder as the premium.

At best this statement that the only commissions, fees or rebates paid from the Canary riverside policies is disingenuous of Reich and I will be making a formal complaint.

22 Utilities

There is a total lack of any information in relation to gas, electricity and water recharges that are applied. The financial threat to the ability to manage is real because the electricity account results in a bill of more than £100,000 each month, but, as my document provided for section 20 dispensation explains, there is no credible system to re-charge these costs.

Accurate collection of electricity and gas charges is critical to the long term success of this appointment.

23 Electrical supply - sub metering

Lack of accurate transparent accounting records

23.1 There is no transparent accounting record of the electricity supply. From explanations that I have been given of the re-charging operation, I can only conclude that the whole system is unfit for purpose.

23.2 We have not received any information about electricity at all from CREM, yet despite the management order I have been advised that after the 1 October 2016 CREM continued to instruct Inenco to demand and collect over £230,000.

23.3 Inenco have drip fed us information: for example, we know that there were surpluses on past billings, but we still have not seen the complete picture. Inenco provided us with the detail of the annual charges made for most units, but then went on to explain that they had to make up some of the numbers because many of the meters did not work. We then found that some of the information they gave us was wrong. As a result we quickly lost faith in any information and data provided by Inenco.

23.4 The last report of the billing Inenco provided showed that a profit of £142,000 was made on the electrical re-sales. However, it transpires that many of the meter readings were incorrect or guessed, because in some cases meters and readers simply do not operate or have been removed. The system is in shambles. After the evidence presented in the 2 March hearing by the financial controller of CREM it is my belief that no reconciliation of the electrical utility cost and income have ever been carried out. That is an extraordinary lapse of accounting procedure in any business, especially with the extra requirements for service charge accounting. It cannot be right that costs are incurred and income is collected and there is no summary on the numbers made when a large part of the costs are collected through the service charges.

The landlords Section 20 notice for the metering replacement

23.5 In March 2016, it was known that the metering system did not work as Marathon Estates Ltd sent all leaseholders a section 20 notice to replace the meters notice was dated March 2016. On the 27 October 2016 Marathon Estates Ltd received a report from SVM Associates. The report dealt with the whole replacement program, but it was not disclosed to me at all. With no documents and after a journey of discovery involving painstaking detective work, we found out what systems are in place; how they operate and the defects that are known about.

The landlord's resistance to my proposal

23.6 A section 20ZA application for dispensation to install new meters was considered on the 2 March. My proposal is to replace all existing meters and measuring apparatus with new rented equipment. The decision on the application was deferred to an oral hearing because the landlord does not believe the option of the meter rental was a suitable method.

23.7 This has simply caused delay and a problem with the collection of the assessed costs for the consumed electricity for which, as Manager, I receive a monthly invoice. Even Westminster Management Services Ltd, the company that employs CREM's financial controller and Mrs Louise Berwin, are querying the bill. They have refused to pay because they believe that the costs assessed without metering are too high.

24 Electrical supply -Fiscal metering

24.1 On the 7 October 2016, we were told by Inenco that there are four fiscal meters on the estate, and initially by them that one meter purely served the hotel. We accepted that information and worked on that basis.

24.2 However that information has changed. We are now told that the fourth meter is a common supply, contradicting the previous information. Coupled with the unwillingness to prove any financial reconciliations for the electricity, we are all still guessing the right and the wrong of the data provided. Given my experience to date, it is my belief that the whole approach is designed to be misleading intentionally.

24.3 CREM appointed a contractor, Maleon Ltd, to convince me that all four fiscal meters are as one supply, yet the drawings that I have seen appear to indicate that that is not the case. I have suggested that if I had sight of the financial records, I may be able to carry out a proper reconciliation to assess the position. No records have been provided.

24.4 My overriding concern is to ensure that whatever is done is accurate. Inenco have been dealing with the electrical supply and metering for some 10 years. If it is shown that their records are wrong, every piece of evidence relied on in past cases, and all past electricity charges are thrown into doubt.

Before accepting Inenco's changed information, I need to be certain beyond doubt of the structure. For that reason I have employed an independent specialist to prove the service and to report back to me.

24.5 My suggestion has been that CREM contract the fourth meter, as they have done for the gas supply, and provide me the fullest data to resolve the issues. They have not done so. Duncan Rendell has suggested I just agree to contract the supply.

25. Thermal Meters

We have had no information at all as to the re-charging structure, and the anecdotal information provided is that it is not functioning. Further investigation is needed.

26 Gas meters

26.1 CREM contracted the gas supply. We have taken over the process amicably but we have had no information as to the re-charges, either in operational terms or financial records. Again this is detective work: we do not know the gas re-charge structure and how it is applied.

26.2 We are aware that SVM Associates carried out surveys and recommended the gas meter replacement but there has been no section 20 process and we do not know why there is a need to change the methods applied which may become apparent within financial records*. Gas is supplied to commercial units and there is a small supply to each residential unit for the hobs. We are told that there has never been a method to recover costs for each residential unit for this gas supply, although it is clear these costs are met based upon an apportioned basis, in the same way as other service provisions.

26.3 We will not be continuing with the gas meter replacement recommended to CREM by SVM Associates until the residents have been consulted. The options will be to introduce a charge system or simply after a suitable notice period disconnect the gas supply to each unit or to remain with the status quo. It will be cheaper to provide a new electrical ring main hob to each flat than the extensive engineering works needed to meter the gas supplies.

27 Water metering

We have not received any accounting records to be able to understand or complete the water re-charging.

28 Staff

28.1 The TUPE process is complete and we have now tried to absorb the staff into a way of working based on respect and co-operation. We inherited and had commenced a few disciplinary issues to manage and we believe a restructure would be suitable as there is little documented staff instruction. Once we have a review of the structures we need basic HR and welfare training for all.

28.2 It is critical that we look at the staff costs. If the security costs are included, staff costs are a huge part of the operational expenditure, but the operational style is segmented and in my view poor value for money. There is no use of technology and the main issue of parcels receipt or delivery and is currently addressed on an ad hoc basis.

28.3 It is my view that change should be talked through with the stakeholders and staff, to look at other opportunities for staffing structures where I believe real improvements in service can be made. Savings and service improvements along with improved satisfaction can probably be achieved at the same time.

29. The future

29.1 Whilst there are many legal cases running and uncertainty as to how and when the legal arguments will be resolved, a practical outlook to the management challenge is required, however hard that may be to achieve.

29.2 There is great deal to do at Canary Riverside. Change is essential. Openness in the accounting is needed. So is transparency, so far as possible, within the management systems, and communication and listening to leaseholders.

29.3 This can only be successful without the continued challenges of litigation and without continual obstructions of the management order. Retaining support and help from staff and contactors so that they continue to want to work at Canary Riverside is a major task. The many obstructions are frustrating and unrewarding for site staff and contractors. Our prime task is to ensure that we do not lose their knowledge and that they continue to work at Canary Riverside.

29.4 I have the impression that there is a continued attempt to undermine my team. The time required to try to re-build the whole management process, and especially to build and retain the confidence of the staff and the goodwill of contactors is neither easy nor inexpensive at this stage.

29.5 The overall situation is still fraught; the financial position is not yet stable and the costs will increase, which increases the risk of faltering support from leaseholders. That risk will become ever greater as we accumulate legal costs and there is no visible and radical progress on the ground.

29.6 The legacy of poor maintenance and simple reactive repair failures exacerbate the operational challenges of keeping things running, spending only on what is needed yet building the level of service that Canary Riverside was designed to receive.

29.7 There is significant debt. The landlord has some control over this because it and its associated companies make sizable contributions to the service charge and utility costs. I ask the Tribunal to lift the stay on my power to secure borrowing against CREM's title. The financial management is difficult with the current debt levels and the inability to date to collect old debt.

29.8 The new budget has been sent out, and we have tried to find a balance in the volume of words and paper sent to each leaseholder. This change will present some with major challenges and we will work to explain whatever is needed to assist and to secure payment but the feedback so far is that all leaseholders really want progress to be made.

29.9 Moving onward to try to make some improvements in the building we have arranged for the decoration of the P1, P2 and ground floor areas, as well as a replacement of lights to LED fitting and new signage in those areas. We are looking at other ways to finish off the window repairs and the garden contractors have been replaced with the old contractors Burgeon Garden Services who were much respected by the leaseholders. We have also replaced the security firm, although CREM has separated the contract for the P2 car parking area which we appear to no longer manage, and we have lost control of the entrance to the car park overall. We have also renegotiated the lift contract and made a saving of 15% on the contract cost that will be fixed for 5 years, resulting in savings of over a third of a million pounds on the remainder of the contract term in total.

29.10 We are planning the staged replacement of sections of the door entry system from the summer, retaining the old parts for spares to prolong the life of the older sectors. If we can secure the wayleave agreement we are talking with Love digital to bring in SKY Q and we are also looking at energy measures that can be made to save power on the lights and other consumables. It is essential

that we replace the ADT fire alarm panels as they have been patched up over the years and would benefit from an update in the operational platform and move to open source software.

29.11 It is quite clear to me that the previous management has been incompetent, but it is also a concern that so many managers and companies have worked at the development over the past 10 years. Marathon Estates had a very large staff turnover with the result that no continuity of thought and action could be achieved. The problem now is engaging with a site with so many and so many varied legacy problems, where almost all the equipment is now 17 years old and it all requires replacement or upgrade at the same time. Normally in management of the buildings such costs are spread over a planned programme of years keeping cost at a manageable level to those that are due to pay these bills.

29.12 As appointed manager, I will continue to progress the activities and work to fulfil the intent of the management order, as far as that is materially possible. It is not sustainable dealing with so many legal actions in both time and money, as it reaches a point where the legal process continues to generate ever more legal actions as the drive to dispute becomes ever more entrenched, especially where the costs do not seem to be a consideration.

A handwritten signature in black ink, appearing to read 'Alan Coates', written in a cursive style.

Alan Coates

March 2017